STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Wisconsin Energy Corporation, Integrys Energy Group, Inc., Peoples Energy, LLC, The Peoples Gas Light and Coke Company, North Shore Gas Company ATC Management, Inc., and American Transmission Company, LLC	)	
	)	Docket No. 14-0496
Application pursuant to Section 7-204 of the Public Utilities Act for authority to engage in a Reorganization, to enter into agreements with affiliated interests pursuant to Section 7-101, and for such other approvals as may be required under the Public Utilities Act to effectuate the Reorganization.	)	

JOINT APPLICANTS' POST-HEARING REPLY BRIEF

PUBLIC VERSION

Dated: April 10, 2015

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Wisconsin Energy Corporation ("Wisconsin Energy"), Integrys Energy Group, Inc. ("Integrys"), Peoples Energy, LLC ("PELLC"), The Peoples Gas Light and Coke Company ("Peoples Gas"), North Shore Gas Company ("North Shore") (collectively, Peoples Gas and North Shore are referred to herein as the "Gas Companies"), ATC Management Inc. ("ATCM") and American Transmission Company LLC ("ATCLLC") (operated as a single entity and referred to collectively herein as "ATC") (all, collectively, the "Joint Applicants" or "JA") hereby file with the Illinois Commerce Commission (the "Commission" or "ICC") this Post-Hearing Reply Brief addressing the Joint Applicants' August 6, 2014 Application requesting that the Commission approve the proposed Reorganization in which Wisconsin Energy will acquire the common stock of Integrys pursuant to Section 7-204 of Illinois' Public Utilities Act (the "Act"). 220 ILCS 5/7-204.

I. INTRODUCTION

B. Overview

The Joint Applicants' evidentiary presentation and Initial Brief have demonstrated conclusively that the proposed reorganization (the "Reorganization") meets the relevant requirements of the Act and should be approved by the Commission. *See* 220 ILCS 5/7-101, 7-204, 7-204A. As discussed in detail in the Joint Applicants' Initial Brief, in addition to presenting evidence and agreeing to numerous conditions and commitments designed to ensure that the Reorganization meets the threshold requirements in Sections 7-204(b) and (c) for Commission approval of the merger, the Joint Applicants have shown that Wisconsin Energy's acquisition of Integrys will provide numerous benefits for Peoples Gas' and North Shore's customers. For the reasons set forth in the Joint Applicants' Initial Brief and this Reply Brief, the Commission should approve the proposed Reorganization subject to the commitments and conditions set forth in Appendix A hereto.

While Staff in its Initial Brief correctly indicates that the Joint Applicants and Staff continue to disagree with respect to four conditions Staff witnesses have recommended, the Joint Applicants note that for three of those four conditions, the differences between Staff and the Joint Applicants rest on relatively minor differences in emphasis, wording, and/or timing. For the two conditions Staff witness Mr. Lounsberry proposes with respect to Section 7-204(b)(1)'s requirement that the Reorganization not diminish the Gas Companies' service quality concerning minimum Full-Time Equivalent ("FTE") requirements and a "recommitment" to complete Peoples Gas' Accelerated Main Replacement Program ("AMRP") by 2030, the Joint Applicants agree that there should be conditions that achieve the goals sought by Mr. Lounsberry. However, as explained herein and in their Initial Brief, the Joint Applicants believe that certain aspects of the language and emphasis contained in Staff's proposed wording of those conditions could be problematic. Likewise, with respect to the first of the two conditions proposed by Staff witness Mr. Smith pursuant to the Commission's authority to impose conditions pursuant to Section 7-204(f) that would require the Gas Companies to develop a first of its kind Pipeline Safety Management System for a gas distribution company, the only difference between Staff and the Joint Applicants is whether the Commission should allow one year or two years for the development of this program.

It is only with respect to part of Mr. Smith's second condition proposed under Section 7-204(f) – a requirement that Peoples Gas move all of its non-AMRP related meters outside or to an accessible inside location within 10 years – that the Joint Applicants strongly disagree with Staff. Not only would such a condition go far beyond the scope and purpose of Section 7-204, but it would create a large and expensive capital program *in addition to* AMRP that would have major rate impacts for customers and potentially threaten conflicts with the resources needed for

a timely completion of the AMRP. Moreover, it is contrary to a recently approved settlement between Peoples Gas and Staff that acknowledges it will not be feasible for Peoples Gas to move 100% of its meters outdoors or to a central, accessible location.[1]

Staff also proposes two additional conditions concerning potential outcomes from the proceeding (ICC Docket No. 15-0186) initiated by the Commission to investigate the hearsay allegations contained in two anonymous letters sent to the Commission regarding issues related to the AMRP (the "AMRP Investigation Docket"). For purposes of continuing to narrow the issues to be determined by the Commission with respect to the Reorganization, the Joint Applicants have no objection to agreeing to conditions of this nature, but propose some modifications to the language in an effort to clarify the meaning of the language used and avoid potential uncertainty in the future. The Joint Applicants have added these two conditions with the Joint Applicants' proposed modifications to Appendix A as Nos. 46 and 47.

Meanwhile, the arguments of the Illinois Attorney General ("AG") and the City of Chicago (the "City") and Citizens Utility Board ("CUB") (collectively "City/CUB") are entirely without merit. The AG and City/CUB largely ignore the plain language of Section 7-204, or else try to distort its meaning, in a continuing effort to transform this proceeding into what it should not be: an investigation into past issues with respect to Peoples Gas' AMRP operations and management, and forum on prescribing ways to change the AMRP going forward. The Commission already has established other processes and procedures to identify and remedy any problems that may exist with the AMRP – including but not limited to the two-phase investigation of the AMRP by The Liberty Consulting Group ("Liberty") – that will be unaffected by approval of the Reorganization. The Joint Applicants have agreed to conditions

[1] *Illinois Commerce Comm'n v. The Peoples Gas Light and Coke Company*, ICC Docket No. 13-0460 (Order, Jan. 28, 2015).

proposed by Staff concerning the implementation of recommendations to be made by Liberty in its final report, and Peoples Gas will remain subject to the full jurisdiction of the Commission, including any requirements imposed by past or future Commission orders regarding the AMRP and/or the Liberty audit. Moreover, contrary to the AG's and City/CUB's assertions, Wisconsin Energy has demonstrated that it is "ready, willing and able" to continue the AMRP consistent with the recommendations expected from Liberty's final report, as well as that it will support and continue Peoples Gas' current initiatives being developed in response to Liberty's Interim Report, subject to any refinements determined in conjunction with Staff and Liberty. The AG's and City/CUB's proposed conditions related to the AMRP, as well as their other conditions, are unsupported by the Act, or any other authority. Further, these parties compound their legal errors by making factual claims that are contrary to (or simply ignore) the evidence.

Additionally, City/CUB now argues that the Joint Applicants have failed to submit evidence sufficient for the Commission to make the findings required for several of the Section 7-204(b) findings, including ones on which City/CUB failed to present any testimony during this proceeding. This belated effort by City/CUB fails to establish any reason why the Commission should not approve the Reorganization. Both the Joint Applicants and Staff have presented testimony that supports each of the findings that Section 7-204(b) requires and, except for the specific wording of conditions regarding minimum FTEs and a commitment to completing the AMRP by 2030 as discussed above, both the Joint Applicants and Staff agree that the evidence meets the requirements of Sections 7-204(b)(1) through (7), as well as subsection (c).

In short, application of the proper legal standards to the evidentiary record fully supports Commission approval of the proposed Reorganization. Accordingly, for the reasons set forth in

the Joint Applicants' Initial Brief and below, the Commission should approve the Reorganization and make the other findings and approvals requested by the Joint Applicants in this proceeding.

C. Legal Standards

1. Section 7-204

As discussed in the Joint Applicants' Initial Brief (at 2-3), Section 7-204 of the Act provides the sole "comprehensive" scope of the Commission's authority to approve the Reorganization, as the Commission determined when interpreting Section 7-204 in *In re SBC Communications, Inc., et al.*, ICC Docket No. 98-0555, 1999 Ill. PUC LEXIS 738 (Sept. 23, 1999) at *26 (hereinafter "*SBC Communications*").

City/CUB, however, attempts to argue that when it approves a proposed reorganization subject to Section 7-204, the Commission must go beyond the comprehensive required findings set forth in Sections 7-204(b) and (c) of the Act to make a general determination as to whether or not a merger meets some general "public interest" standard. (*See* City/CUB Init. Br. at 7-9, 83.) In particular, City/CUB relies on the Act's general declaration of findings and intent, Section 1-102, to support its assertion that the Commission must go beyond the requirements of Section 7-204 when determining whether to approve a proposed reorganization. (*Id*. at 8.) Illinois courts, however, have held that these declarations are "prefatory," and of no substantive or positive legal force. *See Monarch Gas Co. v. Illinois Commerce Comm'n*, 261 Ill. App. 3d 94, 99 (5th Dist. 1994). Moreover, it is ironic that while City/CUB relies on the canon of statutory construction that requires a statute to be interpreted so as not to render a word or phrase superfluous (*see* City/CUB Init. Br. at 9), City/CUB's interpretation would completely ignore Subsection (e) of Section 7-204, which expressly provides: "No other Commission approvals shall be required for mergers that are subject to this Section." 220 ILCS 5/7-204(e) (emphasis added). City/CUB's standard for Commission review of a proposed reorganization would effectively render Section

7-204(e) a nullity, and thus, must be rejected based on the case law cited by City/CUB themselves. *See Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189 (1990).

City/CUB further relies on Section 7-204(f) in support of its position that the Commission must make a general "public interest" finding when determining whether to approve a proposed reorganization, asserting that Section 7-204(f) "requires" the Commission to impose conditions on a reorganization. (*See* City/CUB Init. Br. at 7-8.) The Commission, however, rejected a similar argument made by intervenors in *SBC Communications*, determining that Section 7-204 does not require a specific "public interest" finding and that the seven specific findings required by Section 7-204(b) will have the effect of protecting the interests of the utility and its customers. *SBC Communications*, at *26-27. Indeed, City/CUB's attempt to expand the scope and interpretation of Section 7-204(f) in this manner would again make superfluous the express language of this provision that gives the Commission permissive authority to impose conditions – using the word "may" instead of "must" or "shall" – when in the Commission's "judgment" such conditions are "necessary to protect the interests of the public utility and its customers." Thus, City/CUB's interpretation of Section 7-204(f) would violate the primary rule of statutory construction, which is to effectuate the true intent and meaning of the legislature by giving a statute's language its "plain and ordinary meaning." *Wisnasky-Bettorf v. Pierce*, 2012 IL 111253 at ¶ 16.

Further, the AG's and City/CUB's attempt to use Section 7-204(f) as a basis for arguing that the Commission should impose numerous conditions to *enhance* the Gas Companies' service or the interests of customers likewise is contrary to the plain and ordinary meaning of the statute's language, as well as the Commission's interpretation of this subsection. In *SBC Communications*, the Commission examined the scope of Section 7-204 and, in particular, the

interplay between subsections (b) and (f). The Commission concluded that Section 7-204(b) establishes the minimum findings that "encompass most, if not all, of the interests in need of protection" in a proposed reorganization,[2] and that any additional findings made by the Commission and conditions based upon those findings must have "a reasonable relationship to the Section 7-204(b) interests articulated by our legislature." *SBC Communications*, at *97-*98. The Commission went on to find that, based on the statutory language of Section 7-204(f) "as the best indicator of legislative intent," any conditions imposed on a proposed reorganization be, "in [the Commission's] good and informed judgment, of a type necessary to protect the interests of the company and its customers consistent with the interests outlined by Section 7-204(b)." *Id*. at *98-*99 (emphasis added).

As discussed in detail in the Joint Applicants' Initial Brief (at 2-3), interests outlined in Section 7-204(b) are focused on ensuring that a proposed reorganization will not have an adverse impact on the ability of the Gas Companies to perform their obligations under the Act and provide service to their customers. *See In re GTE Corp. and Bell Atlantic Corp.*, ICC Docket No. 98-0866, 1999 Ill. PUC Lexis 825 at *28 (Oct. 29, 1999) ("At the outset, it must be noted that the standard contained in the statute requires the Commission to evaluate whether the impact of the proposed reorganization will be to diminish service quality, not whether the proposed merger will enhance service quality.") Accordingly, to be consistent with those interests, conditions imposed under Section 7-204(f) likewise should be designed to prevent diminishment of existing service quality and not focused on enhancements or improvements. As has been determined previously by the Commission, this is the plain and ordinary meaning of the word

[2] Contrary to City/CUB's conclusions (*see* City/CUB Init. Br. at 12, 83), it is in this sense that the Commission concluded that Section 7-204's requirements provide a "public interest test" such that a reorganization which satisfies Section 7-204 also would satisfy the requirements of Section 7-102, if it were applicable to a reorganization, in *AGL Resources Inc., Nicor Inc., et al.*, ICC Docket No. 11-0046 (Dec. 7, 2011) Order at 38 and n. 197 (hereinafter "*AGL-Nicor Merger*").

"protect" as used in Section 7-204(f). *See AGL-Nicor Merger* at 77 (concluding that the Commission would not alter the status quo in its order approving a reorganization because Section 7-204(f)'s authorization to issue conditions "to protect" the public interest is distinct from "enhancing the public interest"). This is consistent with the definition of "protect," which is "to cover or shield from that which would injure, destroy, or detrimentally affect," and does not include the concept of improving or enhancing the item which is to be protected. Webster's Third New International Dictionary 1822 (1993).[3]

The authority relied upon by the AG and City/CUB does not support their interpretation of Section 7-204 and, in particular, subsection (f). The AG's and City/CUB's proposed interpretations as to the scope of Section 7-204 and subsection (f) should be rejected.

2. Burden of Proof

The Joint Applicants do bear the burden of proof on establishing that the Reorganization meets the requirements of Section 7-204. *AGL-Nicor Merger* at 45. This means that the Joint Applicants must produce evidence to support the findings that the Commission must make under Section 7-204 and persuade the Commission that those requirements have been met. *See Board of Trade v. Dow Jones & Co., Inc.*, 108 Ill. App. 3d 681, 686 (1st Dist. 1982). Here, the Joint Applicants have met these burdens. The Joint Applicants produced substantial evidence on each of the findings required by Section 7-204, as well as the information required by Section 7-204A.[4] Based on this evidence, as well as the testimony of its own witnesses, Staff has

[3] Illinois courts frequently cite to Webster's Third New International Dictionary when determining the plain and ordinary meaning of statutory terms. *See*, *e.g.*, *People v. Chenoweth*, 2015 IL 116898 at ¶ 27; *Gallagher v. Union Square Condominium Homeowner's Association*, 397 Ill. App. 3d 1037, 1042 (2nd Dist. 2010).

[4] City/CUB incorrectly assert that the Joint Applicants need to establish the requirements of Section 7-204 by a "preponderance of the evidence." (*See* City/CUB Init. Br. at 89, 95.) While the Joint Applicants believe that the evidence they have produced would meet this standard, the appropriate evidentiary standard that applies for findings by the Commission is "substantial evidence," which "means more than a mere scintilla but does not have to rise to the level of a preponderance of the evidence." *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 2014 IL App (1st) 132011 at ¶ 54.

concluded that, except for the specific wording of two conditions related to Section 7-204(b)(1), the record evidence in this case establishes the findings required by Section 7-204 for approval of the Reorganization. Moreover, the Joint Applicants have presented evidence of benefits that the Reorganization will bring for the Gas Companies' customers. (*See* JA Init. Br. at 5-7 for summary) Accordingly, for the reasons stated in the Joint Applicants' Initial Brief and herein, the Commission should find that the Joint Applicants have met their burden of proof with respect to the requirements of Section 7-204 and approve the Reorganization.

II. THE RECORD EVIDENCE SUPPORTS THE COMMISSION MAKING THE FINDINGS REQUIRED BY SECTION 7-204(b) AND APPROVING THE REORGANIZATION

In this section, the Joint Applicants will address the provisions of Section 7-204(b) that remain disputed.[5] With respect to Staff, the only disagreements remaining for any of the Section 7-204(b) requirements are relatively minor differences of opinion on the specific wording of two Section 7-204(b)(1) conditions. Both the AG and City/CUB make arguments concerning Sections 7-204(b)(1) and (7) based upon their inappropriate efforts to make this proceeding a forum to address perceived problems with the AMRP, which fail to undermine the evidence presented by the Joint Applicants and Staff demonstrating that the requirements of these provisions have been met. Further, City/CUB's arguments with respect to Sections 7-204(b)(2), (3), (4) and (5) – provisions City/CUB's witnesses failed to address directly in any of their testimony – likewise should be rejected. Based upon the evidence, as well as the numerous

[5] Both the Joint Applicants and Staff address the applicability and requirements of Sections 6-103, 7-101, 7-102, 7-204(b)(6), 7-204(c), 7-204A, and 9-230 in their initial briefs and both concluded that as applicable to this proceeding, there is no dispute between the Joint Applicants and Staff. (*See* JA Init. Br. at 25, 29-31, 48-51; Staff Init. Br. at 35, 37-42.) Neither the AG nor City/CUB addressed or contested these provisions in their initial briefs. Accordingly, the Joint Applicants will not address these provisions further in this Reply Brief, and will rely upon their discussion of these issues as noted in their Initial Brief. Also, no other party has addressed the issue of approval with respect to ATC, so Joint Applicants will rely upon their presentation of the issues related to ATC in their Initial Brief, as well.

commitments made and conditions agreed to by Joint Applicants, the Commission should make the findings required by Section 7-204(b) of the Act and approve the Reorganization.[6]

A. Section 7-204(b)(1)

Section 7-204(b)(1) requires that the Commission find that "the proposed reorganization will not diminish the utility's ability to provide adequate, reliable, efficient, safe and least-cost public utility service." 220 ILCS 5/7-204(b)(1). The Commission has determined that with respect to this subsection, "[t]he intention of the statute is to sustain the utility's service quality status quo, not to achieve quality improvements." *AGL-Nicor Merger* at 13.

Staff and the Joint Applicants have agreed on a number of conditions related to Section 7-204(b)(1) to ensure that the Reorganization will not result in any diminishment of the Gas Companies' ability to provide adequate, reliable, efficient, safe and least-cost public utility service. As explained below, as well as in both the Joint Applicants' and Staff's Initial Briefs, these conditions, along with the other evidence in the record, support the Commission making the finding required by Section 7-204(b)(1), regardless of which version of the AMRP completion date and minimum FTE commitments the Commission decides to adopt. Nor do the arguments made by the AG and City/CUB based on their efforts to make this proceeding about perceived problems that exist with the AMRP support an opposite conclusion.

1. Disagreements With Staff On The Specific Wording Of AMRP And FTE Conditions Do Not Prevent The Commission From Finding That The Reorganization Meets The Requirement of Section 7-204(b)(1)

Both Staff and the Joint Applicants agree that there should be conditions with respect to the completion date of the AMRP and a minimum FTE commitment to help ensure that the

[6] The Joint Applicants and RESA have reached a settlement in principle with respect to the issues raised by RESA in this proceeding, which includes the commitments contained in Joint Applicants' conditions numbers 42 and 43 of Appendix A, and provides further structure with respect to the actions to be taken and/or discussions to be had with respect to the items listed in condition number 44 of Appendix A. The Joint Applicants and RESA are still working on executing a settlement agreement as of the time of this filing.

Reorganization does not cause any diminishment of the Gas Companies' existing service quality. Under either Staff's or the Joint Applicants' proposals, therefore, the Commission can find that Section 7-204(b)(1) has been met. As explained below and in the Joint Applicants' Initial Brief, however, there are practical concerns with respect to the wording of Staff's versions of these two conditions. Accordingly, the Commission should adopt the Joint Applicants' versions of these conditions.

a. **AMRP Completion Date Condition**

With respect to ensuring that the Reorganization will not affect the current completion date targeted for the AMRP, Staff proposes a condition worded as follows:

> Joint Applicants will reaffirm Peoples Gas' commitment to the Commission in Docket Nos. 09-0166/09-0187 (Consol.) to complete the Accelerated Main Replacement Program ("AMRP") by the end of 2030.

(Staff Init. Br. at 10.) The problem with this proposed condition, however, is that Peoples Gas did <u>not</u> make a commitment to the Commission in its 2009 rate case to complete the AMRP by the end of 2030 that it can "reaffirm" in this proceeding.

As Joint Applicants witness Mr. Schott explained, in the referenced 2009 rate case, one of Peoples Gas' witnesses presented various cost-benefit analyses for acceleration of the company's main replacement program, which used three different completion years – 2025, 2030 and 2035 – for purposes of supporting a cost recovery rider. Schott Sur., JA Ex. 18.0, 3:46–55. Peoples Gas' witness concluded that based on his cost-benefit analysis, a 2030 completion date was the most feasible based on his cost-benefit analysis, and used the results of his analysis for a 2030 completion date to show that acceleration of main replacement could provide benefits that would not be outweighed by its costs, so that a cost recovery rider should be granted to support acceleration. *Id.*, at 3:55 – 4:72. Peoples Gas did not make any commitment in the 2009 rate case to accelerate its main replacement independent of obtaining an automatic cost recovery

rider. *Id*. Consequently, the wording of the condition sought by Staff here could lead to uncertainty in the future over what, if any, commitment from the 2009 rate case was reaffirmed in this condition.

As discussed above, the purpose of Section 7-204(b)(1) is to maintain the "status quo" and to prevent a reorganization from causing service quality to diminish. Accordingly, any condition or commitment of this nature should be based on maintaining the current status of the AMRP's completion date. Mr. Schott explained in his testimony that presently, "it remains Peoples Gas' intention, assuming it receives and continues to receive appropriate cost recovery, to complete the AMRP by 2030." Schott Reb., JA Ex. 9.0 REV., 4:75-77. Consistent with the purpose and requirement of Section 7-204(b)(1), therefore, the Joint Applicants have proposed a commitment that would maintain this status quo:

> Peoples Gas will continue the [AMRP] assuming it receives and continues to receive appropriate cost recovery, with a planned 2030 completion date.

Leverett Sur., JA Ex. 15.0, 9:180-184; JA Ex. 15.1 REV., at No. 5. Because of the potential for future confusion and uncertainty over the meaning and application of Staff's proposed language for this condition, the Joint Applicants urge the Commission to adopt their version set forth above which, as explained, maintains the pre-Reorganization status quo and thus, meets Section 7-204(b)(1)'s requirement with respect to the planned AMRP completion date.

b. **Minimum FTE Condition**

Both the Joint Applicants and Staff propose a condition that would require a minimum level of FTEs be employed by the Joint Applicants, but differ slightly as to the specifics of what those levels and the focus of the condition should be.

To demonstrate their commitment to their position that the Reorganization would not result in a large-scale reduction in force after it closes, the Joint Applicants proposed an

enforceable commitment to maintain *at a minimum* a floor-level of employment *in Illinois* of 1,953 FTEs for at least two years after the close of the Reorganization. Leverett Dir., JA Ex. 1.0, 18:383-384; Leverett Reb., JA Ex. 6.0, 23:612-614, 24:633-636; Leverett Sur., JA Ex. 15.0, 13:294 – 14:301. This would include, in the aggregate, the employment levels at the Gas Companies and Illinois-based employment levels at the shared services company, Integrys Business Support, LLC ("IBS"). *See* Leverett Reb., JA Ex. 6.0, 23:612 – 24:625. This commitment, however, is not designed to set the target employment levels at the Gas Companies or IBS; actual employment levels at each of Peoples Gas, North Shore, and IBS in Illinois will be determined based upon what levels are needed to provide adequate, reliable, efficient, safe, and least-cost utility service and may, in the aggregate, require more than 1,953 FTEs in Illinois. *Id*. For the Gas Companies in 2015 and 2016, the target employment levels that the Joint Applicants plan to have in place to provide adequate, reliable, efficient, safe, and least-cost utility service are 1,356 FTEs for Peoples Gas and 177.7 FTEs for North Shore, based upon the FTE levels approved for recovery in rates by the Commission in its final Order in the Gas Companies' most recent rate case, Docket Nos. 14-0224/14-0225 (cons.).[7] *Id*. at 24:626-630. Alternatively, the Joint Applicants proposed a condition to require specific minimum FTE level at the Gas Companies the level of employment approved by the Commission in *Peoples Gas 2014 Rate Case*. The language of the two alternative FTE commitments proposed by the Joint Applicants appears as No. 2 on the list of commitments and conditions agreed to by the Joint Applicants as follows:

> WEC Energy Group will maintain at least 1,953 full-time equivalent employment ("FTEs") positions in the State of Illinois for two years after the Reorganization closes.

[7] *North Shore Gas Co., The Peoples Gas Light and Coke Co. – Proposed General Increase in Rates*, ICC Docket Nos. 14-0224/14-0225 (cons.), Order (January 21, 2015) (hereinafter referenced as "*Peoples Gas 2014 Rate Case*").

> ***In the alternative:*** The Joint Applicants agree that the Gas Companies will maintain at least 1,534 FTEs for two years after the Reorganization closes.

JA Ex. 15.1 REV., at No. 2.

Staff witness Mr. Lounsberry, however, persists in recommending that the Commission adopt the following language instead:

> Joint Applicants agree to maintain a minimum of 1,356 FTEs for Peoples Gas, 177.7 FTEs for North Shore, and 493 FTEs for Integrys Business Support for two years after the close of the transaction. The Joint Applicants also agree to the extent it [sic] implements any recommendations in the final report on the Peoples Gas' AMRP investigation that require the hiring of additional personnel, those additional personnel shall not count toward the FTE values previously identified and the Joint Applicants shall track them separately.

(Staff Init. Br. at 16.) Staff asserts that this language is necessary for the FTE condition to be consistent with and not depart from the FTE levels for which the Commission ordered recovery in *Peoples Gas 2014 Rate Case*, and prevent a reduction below those levels authorized by the Commission. (*See* Staff Init. Br. at 12, 16.) Staff's assertion on this point, however, appears to misunderstand the evidence presented by the Joint Applicants, and Staff's proposed language itself is not consistent with Staff's stated purpose in making its recommendation.

Contrary to Staff's conclusion, there is absolutely no evidence that the Joint Applicants' proposed language for an FTE condition would result in a reduction or departure from the FTE levels approved by the Commission for Peoples Gas and North Shore in *Peoples Gas 2014 Rate Case*. Indeed, the Joint Applicants explicitly explained in their testimony how this is not the case. Mr. Leverett explained that the 1,953 FTEs level in the Joint Applicants' proposed condition represents an aggregate floor-level commitment below which the overall, aggregate WEC Energy Group headcount in Illinois will not be allowed to fall for two years after the close of the Transaction, and that the 1,953 FTE level does not constitute the intended, forecasted, or targeted level of post-merger employment at Peoples Gas and North Shore. Leverett Reb., JA

Ex. 6.0, 26:669-679; Leverett Sur., JA Ex. 15.0, 13:13:293 – 14:304. Consistent with the concern expressed by Staff, the Joint Applicants have been clear that the Joint Applicants fully expect and intend for the FTE levels at Peoples Gas and North Shore to be those approved for the Gas Companies by the Commission in *Peoples Gas 2014 Rate Case* – 1,356 FTEs for Peoples Gas and 177.7 FTEs for North Shore.[8] Leverett Reb., JA Ex. 6.0, 24:626-633; Leverett Sur., JA Ex. 15.0, 14:300-304.

Additionally, including a specific FTE level for IBS in the condition as proposed by Staff is not required for the FTE condition adopted by the Commission in this proceeding to be consistent with its Order in *Peoples Gas 2014 Rate Case*. That is because in *Peoples Gas 2014 Rate Case*, the Commission did not base its IBS-related cost allocations to the Gas Companies based on any FTE level for IBS, but rather, only determined certain labor costs for the Gas Companies based on specific FTE levels. *See Peoples Gas 2014 Rate Case* Order at 55-63. Moreover, the language of Staff's proposed FTE condition would alter the nature of the commitment originally proposed by the Joint Applicants because it would remove the requirement that the FTEs at issue be employed in Illinois and limit the flexibility the WEC Energy Group will need to operate its business efficiently to seek savings by reducing potential duplication in the shared services company. Leverett Sur., JA Ex. 15.0, 14:320 – 15:324.

Finally, the inclusion in Staff's version of the FTE condition of language regarding extra hiring that might be required as a result of recommendations from the Liberty final report not being counted as part of the initial FTE commitment could have negative, unintended consequences. The additional language suggested by Staff presupposes that any Liberty recommendation for the hiring of additional personnel must be in addition to the forecasted 2015

[8] The above-analysis in this section also addresses similar arguments made by City/CUB (City/CUB Init. Br. at 93-94) and the AG (AG Init. Br. at 75-76).

test year FTE levels. Leverett Sur., JA Ex. 15.0, 15:325-329. It is possible, however, that Liberty could recommend additional hires as a replacement for existing personnel with incorrect or inadequate skillsets, or else propose eliminating certain positions to increase efficiency, leading to the recommendations that, as a whole, provide for no net change in employment levels. *Id*. at 15:329-333. Consequently, it would be better to allow the general conditions concerning implementation of final Liberty audit recommendations agreed to by Staff and the Joint Applicants to address all of Liberty's potential recommendations, including those involving the hiring of personnel. *Id*. at 15:333-338.

Accordingly, while either of the Joint Applicants' proposed versions of an FTE condition, or Staff's proposed language for the condition, would serve the purpose of Section 7-204(b)(1) to ensure that the Gas Companies' service quality is not diminished as a result of the Reorganization, the evidence better supports the alternatives presented by the Joint Applicants for the reasons explained above.

2. The AG And City/CUB Apply An Improper Legal Standard, As Well As Misrepresent And Misuse The Evidence In The Record, With Respect To Section 7-204(b)(1) And The AMRP

a. AG and City/CUB Apply Wrong Legal Standard

The AG and City/CUB incorrectly assert that the evidence does not support the Commission finding that the Reorganization meets Section 7-204(b)(1)'s requirement. As they have done throughout this case, the AG and City/CUB continue to base their position on their belief that Section 7-204(b)(1) requires that the Joint Applicants must demonstrate that the Reorganization will result in *improvements* to existing Gas Companies' operations, namely remedying what the AG and City/CUB witnesses perceive to be problems with the AMRP, in order for the Commission to approve the Reorganization. *See*, *e.g.*, AG Init. Br. at 9 (asserting that the Reorganization should be rejected if it would leave Peoples Gas' operations "essentially

unchanged"); City/CUB Init. Br. at 27 (arguing that there must be conditions "to improve AMRP performance" to find that service will not be impaired). In support of their positions, the AG and City/CUB spend many pages of their briefs detailing what their witnesses perceive to have been problems with historical AMRP operational and performance issues to support their hyperbolic assertions[9] regarding the AMRP being a "trouble-plagued" program. *See*, *e.g.*, AG Init. Br. at 6, 8, 12-16; City/CUB Init. Br. at 23-30, 84-93.

The AG's and City/CUB's arguments are plainly incorrect. Putting aside the vehemence of their tone and amount of problems they claim to catalog with respect to the AMRP, the AG's and City/CUB's position flies in the face of Section 7-204(b)(1)'s plain language. The finding required by Section 7-204(b)(1) is that the reorganization will not "diminish" a utility's ability "to provide adequate, reliable, efficient, safe and least-cost public utility service." 220 ILCS 5/7-204(b)(1). Thus, counter to the AG's and City/CUB's arguments, the Commission consistently has ruled that the focus of Section 7-204(b(1) is on ensuring no drop-off from *existing* service quality levels, and does not require a showing that a reorganization will improve or enhance a utility's service quality. Indeed, in the *AGL-Nicor Merger* final Order, a proceeding oft relied upon by City/CUB in its Initial Brief, the Commission stated with respect to Section 7-204(b)(1) that "[t]he intention of the statute is to sustain the utility's service quality status quo, not to achieve quality improvements." *AGL-Nicor Merger* at 13. *Accord SBC Communications* at *43 ("Significantly, this subsection focuses on whether the impact of the reorganization will 'diminish' [a utility's] ability to provide certain aspects of service, not on whether the merger will improve or enhance those aspects."); *In re GTE Corp. and Bell Atlantic Corp.*, ICC Docket No. 98-0866, 1999 Ill. PUC Lexis 825 at *28 (Oct. 29, 1999) ("At the outset,

[9] *See*, *e.g.*, AG Init. Br. at 20 n. 9 (asserting that Peoples Gas' practices have contributed to a "state of mass confusion" with respect to the AMRP).; 27 (comparing the AMRP to a sinking "Titanic").

it must be noted that the standard contained in the statute requires the Commission to evaluate whether the impact of the proposed reorganization will be to diminish service quality, not whether the proposed merger will enhance service quality.")

From the start of this proceeding, contrary to the AG's and City/CUB's suggestions, the Joint Applicants have acknowledged that there have been problems in the past with the management and implementation of the AMRP, and have been clear that steps need to be taken to correct problems that do exist, whether or not the Reorganization is approved. *See* Joint App. at 12; Leverett Dir., JA Ex. 1.0, 20:433-436; Leverett Reb., JA Ex. 6.0, 9:275-278, 17:474 – 19:518. However, consistent with the language of Section 7-204(b)(1) and the Commission decisions discussed above, the Joint Applicants have taken the position that this merger approval proceeding is not the proper forum for evaluating the AMRP or crafting specific improvements to "fix" those problems. *See* Leverett Sur., JA Ex. 15.0, 11:232-234. Likewise, Staff has agreed that this is not the appropriate proceeding for the Commission to attempt to resolve specific problems that may exist with the AMRP. *See* Stoller Reb., ICC Staff Ex. 8.0, 10:178 – 11:206. Significantly, this is a position on which the Commission and the Administrative Law Judge ("ALJ") in this proceeding agree, having denied numerous procedural attempts to expand the scope of this proceeding to include a substantive examination of the ongoing Liberty audit and the preliminary findings and recommendations made by Liberty in its Interim Report.[10] As

[10] To date, the Commission and the ALJ have denied the following motions and petitions filed by the AG and City/CUB on this issue:

- The AG's and City's Motion to Extend the Schedule, filed on January 2, 2015;
- GCI's Motion to Remove the Confidential Designation from the Liberty Interim Audit Report, filed on January 22, 2015;
- Petition of GCI for Interlocutory Review of the ALJ's Decision Limiting the Use of the Liberty Interim Report, filed on February 4, 2015;
- Verified Requests for Subpoena (to be issued on Liberty) of GCI, filed on February 11 and 13, 2015;
- GCI's Petition for Interlocutory Review of the ALJ's Ruling Denying the Motion to Remove the Confidential Designation from the Liberty Interim Audit Report, filed on February 17, 2015;

succinctly put by the ALJ in one of his rulings, "this is not the proper docket to investigate this [AMRP] program." *See* Feb. 18, 2015 Notice of ALJ's Ruling.

b. The Commission-Established Process and Procedures for Liberty's Two-Phase Audit Provide the Proper Forum For Evaluating and Improving the AMRP, Which Will Not Be Diminished By the Reorganization

The Commission already has established a process and procedure to evaluate the AMRP, determine what issues may exist with respect to the management and implementation of the program, and implement corrective actions: the two-phase investigation of the AMRP by Liberty as ordered by the Commission in the Gas Companies' 2012 rate cases.[11] As ordered by the Commission in the *Peoples Gas 2012 Rate Case*, its chosen expert, Liberty, is in the process of completing a year spent investigating the implementation and management of the AMRP and preparing its final report that will contain its findings and recommendations for improving the implementation and management of the AMRP. Immediately after the final report is issued, Liberty, Staff and Peoples Gas will begin working collaboratively on which recommendations should be implemented and how best to implement them. Leverett Supp. Reply, JA Ex. 14.0, 4:70-75; Stoller Reb., ICC Staff Ex. 8.0, 11:196-200; Stoller Tr., 496:8 – 498:16. As ordered by the Commission, Liberty will then spend a two-year period monitoring the implementation of the recommendations, and the Commission could take further action with respect to ensuring appropriate implementation of those corrective actions as it deems necessary. *See* Leverett Supp. Reply, JA Ex. 14.0, 4:80-87; Stoller Reb., ICC Staff Ex. 8.0, 11:200-204.

- The AG's Motion to Compel, filed on February 17, 2015; and
- The AG's oral request for additional discovery and hearings based on the Joint Applicants' responses to Commissioners data requests, made on March 19, 2015.

[11] *North Shore Gas Co., The Peoples Gas Light and Coke Co. – Proposed General Increase in Rates*, ICC Docket Nos. 12-0511/12-0512 (cons.), Order (June 18, 2013) at 61 (hereinafter referenced as "*Peoples Gas 2012 Rate Case*").

The Joint Applicants have demonstrated that the Reorganization will not disrupt or "diminish" this process. The evidence establishes that the new holding company management is experienced in successfully managing and operating electric and natural gas utilities, including the implementation and management of large-scale capital programs on time, on budget, and in compliance with applicable laws and regulations. Leverett Dir., JA Ex. 1.0, 4:83 – 7:138, 8:168-176, 19:411 – 20:429; Leverett Supp. Reply, JA Ex. 14.0, 10:204-210; JA Ex. 14.1; AG Cross Ex. 8; Hesselbach Tr., 324:14-20; Reed Tr., 363:22 – 364:11. Here, City/CUB attempts to misrepresent the evidence concerning the proven abilities of Wisconsin Energy to manage infrastructure projects by asserting that Wisconsin Energy is "unable" to provide costs for compliance with Milwaukee's repair regulations and suggesting that there is a failure to track costs for noncompliance with those regulations that indicates a lack of performance tracking. *See* City/CUB Init. Br. at 22. This blatantly ignores the evidence that there have been no costs for noncompliance with Milwaukee's regulations to track, as Wisconsin Energy has not been fined or penalized by the City of Milwaukee because the company has been in full compliance with those regulations.[12] Leverett Supp. Reply, JA Ex. 14.0, 9:198 – 10:210; JA Ex. 14.1. Indeed, this evidence highlights Wisconsin Energy's experience in managing capital projects and operational work in an urban environment and its capability to step into the shoes of Integrys with respect to overseeing Peoples Gas' management and implementation of the AMRP. Moreover, as testified to by Joint Applicants witness Mr. Hesselbach, who has years of experience managing large capital projects for Wisconsin Energy, all large and/or long-term capital projects at Wisconsin Energy are subject to significant performance tracking, with

[12] Further, while City/CUB references a response to one of its data requests (JA-City 4.04) as being included in City/CUB Ex. 3.1 to support its assertion, City/CUB Ex. 3.1 does not include the referenced data request response. *See* Leverett Supp. Reply, JA Ex. 14.0, 9 fn. 2. The Joint Applicants' response to data request City 4.04, which reveals that Wisconsin Energy has not been charged with any fines for noncompliance with Milwaukee's regulations, is included in the record as JA Ex. 14.1.

responsible persons identified and held accountable for a project's performance.[13] Hesselbach Supp. Reb., JA Ex. 13.0, 1:15 – 2:30, 4:76-87; Hesselbach Tr., 324:14 – 325:2, 326:12 – 327:6.

Additionally, not only will the Joint Applicants remain subject to the Commission's full jurisdiction after approval of the Reorganization, including its *Peoples Gas 2012 Rate Case* Order regarding compliance with Liberty's investigation and implementation/verification procedures, but the Joint Applicants have agreed to conditions recommended by Staff that will require the Joint Applicants to implement the recommendations from Liberty's final report. Leverett Reb., JA Ex. 6.0, 15:410 – 17:463; Lounsberry Reb., ICC Staff Ex. 9.0, 8:192 – 9:247; Leverett Sur., JA Ex. 15.0, 8:161-168; JA Ex. 15.1 REV., at Nos. 9-11. The AG's and City/CUB's efforts to dismiss these strong commitments as "heavily conditioned" (*see*, *e.g.*, AG Init. Br. at 56-57) are not well-founded and ignore the plain language of the conditions being recommended by Staff. In particular, pursuant to Joint Applicants' condition number 9 from JA Ex. 15.1 REV., Peoples Gas must take action to accomplish the goals of each recommendation in Liberty's final report unless agreement is reached with Staff that a determination should not be implemented because it would be imprudent, impractical, unreasonable or impossible to do so, or the Commission determines that a recommendation should not be implemented. These conditions will ensure that the process and procedures put in place by the Commission in *Peoples Gas 2012 Rate Case* for the evaluation and improvement of AMRP management and implementation would not be negatively impacted by approval of the Reorganization.

[13] The AG's and City/CUB's attempt to undermine Mr. Hesselbach's testimony by pointing to his lack of recent involvement in natural gas projects is inapposite to the substance of his testimony. Mr. Hesselbach's testimony addresses the question of whether the Joint Applicants would "ready, willing and able" to implement the AMRP consistent with additional remedies as may be recommended by the Liberty audit, based upon Liberty's Interim Report. *See* Notice of ALJ's Ruling, January 14, 2015; Hesselbach Supp. Reb., JA Ex. 13.0, 2:33-45. The Liberty Interim Report does not involve the technical aspects of gas infrastructure, cast iron/ductile iron mains, or replacement techniques, but rather, project management principles that are applicable to any capital infrastructure project, which fall under Mr. Hesselbach's area of experience and expertise. *See* ICC Staff Ex. 8.0, Attach. A (Liberty Interim Report); Hesselbach Tr., 326:16 – 327:18.

The AG's and City/CUB's criticism of these conditions appears to be based upon an incorrect assumption that all recommendations contained in Liberty's final report should be implemented "as is" without further evaluation from Peoples Gas or Staff because Liberty's conclusions could never be fallible. While Joint Applicants do not anticipate it happening, it is possible that Liberty's final report could contain a conclusion or recommendation that the Commission would find to be unreasonable or imprudent. For example, *In re Commonwealth Edison Co.*, 2003 Ill. PUC LEXIS 311 at *1-*2, *68-*69, *141-143 (Mar. 28, 2003), the Commission had ordered Liberty to conduct an audit of Commonwealth Edison Company's ("ComEd") rate base for use in connection with determining ComEd's delivery services implementation plan and delivery service tariffs required by Sections 16-104 and 16-108 of the Act. Liberty's final audit report concluded that ComEd had overstated its rate base because of under-investments to its distribution system in earlier years that lead to increased costs in later years that were higher than they otherwise would have been if systematic capital additions had been made over time, and recommended reductions to ComEd's delivery services rate base based on that analysis. *Id*. at *141-*142. The Commission rejected this and other recommendations made by Liberty for reducing ComEd's delivery services rate base in that proceeding, finding that Liberty's recommendations were not supported by the evidence in the record. *Id*, at *165-*173. Thus, it is not unreasonable that the conditions agreed to by Staff and the Joint Applicants provide for the possibility that a recommendation from Liberty in its final report could be found to be unreasonable or imprudent to implement, and to provide an orderly process for how Peoples Gas, Staff and the Commission would address such a situation if it were to arise. Moreover, the opposite position – which the AG and City/CUB appear to endorse – that all

recommendations should be implemented as is, without regard for whether doing so could lead to imprudent or unreasonable results, is nonsensical and should be rejected by the Commission.

c. The Evidence Regarding the Liberty Interim Report Shows That the Joint Applicants Are Ready, Willing and Able to Implement the AMRP Consistent With Additional Remedies to be Recommended by Liberty

In response to the ALJ's January 14, 2015 Notice of Ruling and the rebuttal testimony of Staff witness Mr. Stoller (ICC Staff Ex. 8.0, 9:174 – 10:190), the Joint Applicants reviewed the Liberty Interim Report (ICC Staff Ex. 8.0, Attach. A) to ensure that they are aware of "the possible scope and scale of the obligations [they] will be undertaking in the event the merger is approved" and submitted testimony to assure the Commission that if the Reorganization is approved, Wisconsin Energy is "ready, willing and able to step into the shoes of Integrys and Peoples Gas" to implement the AMRP consistent with additional remedies that may be recommended by Liberty. Wisconsin Energy's management reviewed the Interim Report and submitted testimony that it agrees with the approach for management and implementation of large capital programs as Liberty outlines in the Interim Report, that it supports the current commitments and initiatives undertaken by Integrys and Peoples Gas in response to the Interim Report, and is ready, willing and able to implement the AMRP consistent with Liberty's ultimate recommendations in its final report expected to be issued in mid-2015. *See generally* Leverett Supp. Reb., JA Ex. 12.0; Hesselbach Supp. Reb., JA Ex. 13.0, Leverett Supp. Reply, JA Ex. 14.0; Hesselbach Tr., 323:20 – 324:20.

In connection with the Liberty Interim Report, it must be noted that the AG and City/CUB flagrantly ignore the scope for which the Interim Report was allowed into evidence, extensively citing, quoting and paraphrasing the Interim Report as substantive evidence of existing problems with the AMRP or conclusions reached by Liberty. *See* AG Init. Br. at 8, 14-

16, 24, 28-30; City/CUB Init. Br. at 24-30, 60. The Interim Report, however, was allowed into this proceeding only for the limited purposes discussed above as set forth in the ALJ's January 14, 2015 Notice of Ruling, which did not include being used as substantive evidence of problems with the AMRP, or conclusions reached or recommendations made by Liberty. This ruling was affirmed by the Commission in its denial of the AG's and City/CUB's petition for interlocutory review challenging the limitation placed on the use of the Interim Report. *See* Notice of Commission Action dated March 12, 2015.

The limited scope for which the Interim Report was allowed into this proceeding is anchored upon the fact that it is an "interim" report that, by its very nature, is preliminary and subject to change. As explained by Staff witness Mr. Stoller, the Interim Report contains only "preliminarily identified" problems and "preliminary recommendations" because, at the time the Interim Report was prepared, Liberty had "significant investigative and analytical work yet to do and its final positions about problems and solutions may change significantly." Stoller Reb., ICC Staff Ex. 8.0, 10:176-180. This fact is supported by the words of the Liberty itself in the Interim Report:

ICC Staff Ex. 8.0, Attach. A at 2 (emphasis added). Thus, in light of the ALJ's and Commission's rulings with respect to the appropriate scope for which the Interim Report can be used in this proceeding, as well as its preliminary and transitory nature, the Commission should disregard, or at least give very little weight, to the AG's and City/CUB's arguments that rely on purported "conclusions" from Liberty's Interim Report.

For these same reasons, the AG's proposal to condition the Reorganization on implementing "all audit recommendations of *both* the Interim and Final Liberty audit reports" (*see* AG Init. Br. at 61) must be rejected. Again, the recommendations contained in the Interim Report are *preliminary* recommendations, and subject to change. It is common for changes and corrections to positions to occur throughout the course of an audit investigation. Hesselbach Tr., 321:7 – 322:21. Liberty may determine that a different course is needed or a better alternative is available as it completes its work in the period between the Interim Report and its Final Report. Thus, the AG's proposed condition raises the possibility of the Joint Applicants facing conflicting recommendations without any guidance as to how such conflicts should be resolved. Moreover, if Liberty chooses not to include a recommendation from its Interim Report in the final report, it could be because it determines that its preliminary conclusions upon which it was based were incorrect, or that the preliminary recommendation would lead to unreasonable or imprudent results. For these reasons, the AG's proposed condition should be rejected.

Further, the AG and City/CUB both attempt to rely upon statements in the Interim Report regarding a [redacted] to conclude that the Reorganization will cause a diminishment in service quality in connection with the AMRP. The evidence in the record does not support this conclusion based upon a misreading of the Interim Report. Putting aside the question of whether any substantive conclusions should be drawn from preliminary statements that are subject to change by the auditors, a fair reading of the Interim Report reveals that this was a problem originating from persons at Integrys or Peoples Gas based on the pendency of the merger, and not a problem that would be caused by approval of the Reorganization. *See* ICC Staff Ex. 8.0, Attach A at 2-3, 10-11. Significantly, Liberty indicated

that [redacted]. *Id*.; Leverett Supp. Reb., JA Ex. 8:167-169; Leverett Supp. Reply, JA Ex. 14.0, 7:148-153. Moreover, the Joint Applicants presented unrebutted evidence that no member of Wisconsin Energy's management has told, instructed, or otherwise suggested to Integrys' or Peoples Gas' management that they should [redacted] pending approval of the proposed Reorganization. Leverett Supp. Reb., JA Ex. 12.0, 8:161-166; Leverett Supp. Reply., JA Ex. 14.0, 7:142:145. To the contrary, Wisconsin Energy has taken the position that Integrys and Peoples Gas should not delay any efforts or actions designed in collaboration with the Liberty investigation to improve the management and implementation of the AMRP. Leverett Supp. Reply, JA Ex. 14.0, 7:146-148.

City/CUB also attempts to twist the Joint Applicants' testimony provided in response to the Interim Report to insinuate that Wisconsin Energy does not support making changes to improve the management and implementation of the AMRP. *See* City/CUB Br. at 84. The language quoted by City/CUB is taken completely out of context and was in response to the statement in Liberty's Interim Report that: "[redacted]." ICC Staff Ex. 8.0, Attach A at 4 (emphasis added). The testimony of Joint Applicants witness Mr. Leverett referred to in City/CUB's brief was a confirmation that, after closing, Wisconsin Energy does not intend to fundamentally change, interfere with or abandon the initiatives started by current Integrys management in response to preliminary recommendations from Liberty, in response to Liberty's expressed concern in the Interim Report. Leverett Supp. Reb., JA Ex. 12.0, 5:101 – 6:124.

Further, the AG and City/CUB appear to argue for dramatic change to the management and implementation of the AMRP to improve its performance on the one hand, while inconsistently complaining about potential changes in the existing persons who have been managing the AMRP in the manner complained about by AG and City/CUB on the other. *Compare*, *e.g.*, City/CUB Init. Br. at 84 *with* City/CUB Init. Br. at 20, 24-25. Putting aside such obfuscation, and unsupported claims that the Joint Applicants have stated an intention to "completely alter" the management of the AMRP,[14] the actual evidence demonstrates that there will be significant continuity in the employees making daily decisions about the Gas Companies' operations. Leverett Reb, JA Ex. 6.0, 10:289-292. The Joint Applicants' response to the Commissioners Data Request No. 1 shows no intention to fully replace current AMRP management, but rather, that there is an expected inclusion of at least three persons from Wisconsin Energy's current management team with extensive experience in natural gas operations and construction as part of Peoples Gas' post-closing senior leadership. 3/18/2015 JA Comm. DRR No. 1(b). And, consistent with the Liberty Interim Report's preliminary recommendations with respect to the need for the involvement, commitment, guidance and focus of top holding company management (*see* ICC Staff Ex. 8.0, Attach. A at 5-8), the president of Peoples Gas will be reporting to the top executive of the WEC Energy Group. 3/18/2015 JA Comm. DRR No. 1(b). Also, Wisconsin Energy is currently in the process of reviewing and evaluating the current management and personnel involved with the AMRP, and will make decisions regarding their retention and/or role based upon what will be in the best interests of the utility and its customers given the performance and skillset of those employees. *Id*.

[14] City/CUB makes this assertion based on a cross-examination response from Mr. Leverett that "fully support" in the context of Peoples Gas' initiatives being undertaken in response to the Interim Report "may or . . . may not" include the retention of particular employees involved in that process. *See* Leverett Tr., 216:2-14. This hardly evinces an intent to "completely alter" Peoples Gas' current AMRP management team.

Moreover, contrary to cavalier assertions by the AG and City/CUB that Wisconsin Energy is an out-of-state company that has shown no interest in the AMRP and ongoing Liberty audit, the evidence demonstrates that this is untrue. Wisconsin Energy is actively in the process of gaining familiarity with Peoples Gas' current management and staff; evaluating the performance of existing work management systems and new initiatives; will be reviewing the final report from Phase I of Liberty's investigation; will be working with Liberty and Staff to determine the appropriate implementation of the recommendations in Liberty's final report; reviewing information from the current AMRP investigation docket initiated by the Commission; identifying new or additional resources that could improve performance; and reviewing the statistical performance of the overall AMRP program. *Id*. at No. 1 and 4. While AG and City/CUB complain about the absence of an actual transition plan document at this time, the unrebutted testimony of Joint Applicants' witness Mr. Reed, an expert witness who has been involved in numerous utility mergers and restructurings, is that in a merger of this nature, a detailed transaction plan typically is not prepared until a month prior to the transaction's closing.[15] *See* Reed Tr., 364:12 – 365:5; . 3/18/2015 JA Comm. DRR No. 1.

Significantly, the record evidence supports the conclusion that the absence of a transition plan for the merger has not prevented Peoples Gas from developing and implementing initiatives to address the concerns preliminarily identified by Liberty in its Interim Report. Liberty itself providing a detailed list of the initiatives currently being developed and implemented by Peoples Gas in its Interim Report. *See* ICC Staff Ex. 8.0, Attach. A at 8-9, 13-14, 18, 23, 25-28, App. B. Further, the Joint Applicants provided more recently updated information regarding the number

[15] The AG makes separate argument regarding a lack of detailed due diligence into the AMRP equating to failure to meet the requirement of Section 7-204(b)(1). *See* AG Init. Br. at 16-25. In addition to pointing out that, as conceded by the AG, Staff witness Mr. Lounsberry has testified that there is no Section 7-204(b)(1) concern based on a lack of due diligence given the evidence now in the record (Lounsberry Reb., ICC Staff Ex. 9.0, 27:660-662), the Joint Applicants rely upon their discussion of this issue in their Initial Brief (at 11-13).

of AMRP improvement initiatives that have been developed and that are in the process of being implemented while the Reorganization is pending and before Liberty's final report is issued. *See* 3/18/2015 JA Comm. DRR No. 4. Wisconsin Energy has made it clear that while such initiatives and activities are subject to ongoing refinement in light of the preliminary and transitory nature of the Interim Report recommendations to which they are responding, Wisconsin Energy supports their development and will work to ensure that any progress made in improving the AMRP prior to closing continues after the Reorganization is approved. *See* Leverett Supp. Reply, JA Ex, 14, 8:167-175.

Accordingly, the record as a whole related to the Liberty Interim Report supports the Commission finding that the Reorganization will not diminish the Gas Companies' service quality as required by Section 7-204(b)(1).

d. City/CUB's General Assertions about the Change in Ownership Fail to Undermine the Record Evidence Demonstrating that the Reorganization Meets Section 7-204(b)(1)'s Requirement

The Joint Applicants have submitted evidence demonstrating that if approved, the Reorganization itself – *i.e.*, the Gas Companies being owned by WEC Energy Group after the acquisition of Integrys' common stock – will have no adverse impact on their customers' interactions with or service received from the Gas Companies. There will be no change in the names, corporate forms, or status of Peoples Gas or North Shore. Leverett Dir., JA Ex. 1.0, 16:341-342. The Gas Companies will remain separate Illinois public utilities regulated by the Commission, and remain subject to all applicable laws, regulations, rules, decisions, and policies governing the regulation of public utilities in Illinois. *Id*. at 16:343-345. Further, the Reorganization will not result in the transfer of any of the assets or property of the Gas Companies. *Id*. at 16:345-347. When in need of assistance or customer service, customers will be able to interact with the Gas Companies just as they did before the Reorganization (*i.e.*, using

the same customer service numbers, same mailing address, etc.). *Id*. at 16:353-355. Customers will continue to receive high-quality, adequate, safe, and reliable gas service just as they did before the Reorganization, and, at the same cost as they would have absent the Reorganization. *Id*. at 16:350-353. The Joint Applicants also have committed to honoring the Gas Companies' existing philanthropic pledges and maintaining Integrys' existing levels of involvement in the communities that the Gas Companies serve. Id. at 23:492-501; JA Ex. 15.1 REV., at No. 8.

In response, City/CUB points to certain facts that are truisms about any reorganization where a utility's parent company is acquired by another: that there will be a change with respect to who the parent company is and a change in board and shareholder composition. *See* City/CUB Init. Br. at 21. These are changes that will occur in any reorganization transaction, and such changes by themselves, without more, do not rebut the evidence presented by the Joint Applicants demonstrating that service quality will not be diminished and that the new holding company management has the experience necessary to successfully manage the Gas Companies. *See* Leverett Dir., JA Ex. 1.0, 5:93 – 7:138. City/CUB also speculates that there may be changes in specific employees and/or lobbyists (*see* City/CUB Init. Br. at 20-21), but can cite to no evidence in the record that these persons will, in fact, be changed as a result of the Reorganization or, if they are, how that would diminish service quality.

This leaves City/CUB with the speculative assertion that merely because a holding company's management is physically headquartered in a different state, the service quality of its utilities will suffer. The evidence in the record as a whole does not support such a conclusion. It is not uncommon for the parent company of a utility to be located in a different state, and the residency of its board members or location of its headquarters has no impact on the company's focus on making sure each of its utilities provide high-quality service to their service territories.

Leverett Reb., JA Ex. 6.0, 10:293 – 11:309. The residency of a utility holding company's board members is not predictive of whether or not the interests of the utility's customers will be protected, and this is especially true in a situation like the present case where the Gas Companies will maintain local headquarters and have local management running the day-to-day operations of the utilities. Leverett Sur., JA Ex. 15.0, 19:433 – 20:437. For example, Nicor Gas has a parent with its headquarters located in Atlanta, Georgia, but there is no lack of attention being paid to the needs of Nicor Gas or its Illinois customers. *See* Levertt Reb., JA Ex. 6.0, 10:304 – 11:309.

Related to this point, it must be noted that City/CUB blatantly misstates the record concerning the Gas Companies' headquarters, asserting in their Initial Brief that the Reorganization will result in a "physical relocation of the utility headquarters" that displaces "management policies attuned to Illinois regulatory policy" and that will "present challenges for the Commission." City/CUB Init. Br. at 97. The record evidence plainly shows these statements by City/CUB to be untrue, as the Joint Applicant have testified throughout this proceeding that Peoples Gas and North Shore will maintain local management and maintain their operating headquarters in Chicago and Waukegan, respectively. Leverett Dir., JA Ex. 1.0, 16:341-357; Reed Dir., JA Ex. 3.0, 7:143-146; Leverett Reb., JA Ex., 18:504-505.

Accordingly, City/CUB's arguments should be denied for these reasons, as well.

e. The Commission Should Reject City/CUB's Proposed dotMaps Condition

In connection with Section 7-204(b)(1), City/CUB[16] requests that the Commission impose a condition requiring that Peoples Gas participate in the Chicago Department of

[16] In its Initial Brief, the AG adds a "me too" request for this condition, but makes no additional arguments in support of it. *See* AG Init. Br. at 61.

Transportation's ("CDOT") "dotMaps" website. As outlined in Joint Applicants' Initial Brief, the Commission should reject this condition.

This proposal has no relation to Wisconsin Energy's acquisition of Integrys, addresses a pre-existing City request of Peoples Gas that is not related to the Reorganization, and is an improper effort to impose an enhancement to Peoples Gas' operations that is contrary to the intent of Section 7-204. *See AGL-Nicor Merger* at 13. Moreover, the Joint Applicants have identified specific concerns which Peoples Gas has previously communicated to the City regarding Integrys and Gas Companies computer systems being incompatible with the Google-based dotMaps website, and customer privacy and data security concerns that putting information into dotMaps would entail. Leverett Reb., Ex. 6.0, 22:579-589; City Group Cross Ex. 1 at 15-16 (JA responses to data requests City 10.43 and City 10.44). Nowhere in City/CUB's brief is a solution presented to the issue of incompatibility between the dotMaps application and Integrys' computer system detailed in the Joint Applicants' response to City data request City 10.43 (City Group Cross Ex. 1 at 15). Further, contrary to City/CUB's curt dismissal of the Joint Applicants' data privacy and security concerns, the Joint Applicants do <u>not</u> agree that CDOT's ownership of data put on the system will alleviate the following concerns identified by Joint Applicants:

- The dotMaps application will store construction information that is operationally sensitive and access to this information should be managed appropriately.
- The dotMaps application must provide a method for authenticating and managing the authentication for all users.
- The dotMaps application must have security access controls in place to ensure that only authorized users have the ability to add, delete or modify Integrys provided data.
- Logging capabilities must also be established to track access to the system and modifications to system information.

City data request City 10.43 (City Group Cross Ex. 1 at 16).

For these reasons, the Commission should reject this condition as proposed by City/CUB, and accept the Joint Applicants' proposed commitment that they will continue to work with the City to determine whether and to what extent it is possible for the Gas Companies to participate in the dotMaps website. Leverett Reb., Ex. 6.0, 22:589-591; Leverett Sur., JA Ex. 15.0, 13:275-286; JA Ex. 15.1 REV., at No. 40.

B. Sections 7-204(b)(2) and (b)(3)

Section 7-204(b)(2) provides that the Commission, in approving a reorganization, must find that the proposed reorganization "will not result in the unjustified subsidization of non-utility activities by the utility or its customers." 220 ILCS 5/7-204(b)(2). Under Section 7-204(b)(3), the Commission must find that the "costs and facilities are fairly and reasonably allocated between utility and non-utility activities in such a manner that the Commission may identify those costs and facilities which are properly included by the utility for ratemaking purposes." 220 ILCS 5/7-204(b)(3). Only the Joint Applicants and Staff submitted testimony regarding Sections 7-204(b)(2) and (b)(3), and, as set forth in their respective Initial Briefs, the Joint Applicants and Staff agree that the evidence supports the Commission making the findings required by Sections 7-204(b)(2) and (3). *See* JA Init. Br. at 20-23; Staff Init. Br. at 29-32.

No party rebutted the evidence presented by Staff and the Joint Applicants presented in support of the findings required by Sections 7-204(b)(2) and (3) in their briefs. City/CUB, however, suggest that because the Joint Applicants have not presented the detailed mechanisms they intend to use for tracking transition costs and savings for the Commission to approve in this proceeding, the Joint Applicants began developing such protocols only because of questions posed by City/CUB in pre-hearing discovery. *See* City/CUB Init. Br. at 30-31.

The evidence demonstrates that City/CUB's arguments are not well-founded. Based on the conditions agreed to with Staff, the Joint Applicants will bear the burden of identifying and

tracking transaction costs and transition costs, and in future rate cases they must identify any transaction costs included in the test period and demonstrate that they are not included in the rate case for recovery. *See* JA Ex. 15.1 REV. at Nos. 16, 17, 20. Moreover, the Gas Companies will only be able to recover transition costs to the extent they can establish that they produce savings. *Id*. at No. 21; Reed Tr., 403:11-18. To track and monitor transition costs and savings, the Joint Applicants will use a spreadsheet model operating in parallel with their existing accounting systems similar to what has been used in other utility mergers. Reed Sur., JA Ex. 17.0, 6:117 – 7:122. As with other mergers, the model will be multi-layered allowing granular as well as higher-level tracking to occur. *Id.* at 7:122-126.

Further, while City/CUB's concern is focused on the accuracy of the tracking – *i.e.*, the quantification – of transition costs and savings, Sections 7-204(b)(2) and (3) are concerned with ensuring that costs within the WEC Energy Group holding company system are allocated so as to ensure that the Gas Companies' customers do not unjustly subsidize non-utility activities and that the costs to be included by the Gas Companies in their rates are fairly identified as being proper utility costs. A tracking mechanism for transition costs and related savings will not be the mechanism that makes these allocation determinations. Rather, the determination of which costs are appropriately identified as utility activities and the basis upon which any shared transition costs are to be fairly allocated between the WEC Energy Group companies will be done pursuant to the WEC Energy Group Affiliated Interest Agreement, which will apply the same identification and allocation rules and processes as the Commission approved for the present affiliated interest agreement in place for the Integrys holding company system. *See* Lauber Dir., JA Ex. 2.0 REV., 15:323-328; JA Ex. 2.4. Accordingly, City/CUB's arguments are inapposite to the determinations to be made by the Commission pursuant to Sections 7-204(b)(2) and (3).

Moreover, as discussed in more detail below, it is the Joint Applicants who will bear the burden of proof to establish that any transition cost is just and reasonable, and has produced savings equal to or greater than the cost for which recovery is sought, in a rate case. *See* Reed Tr., 369:14 – 370:8, 379:16 – 380:2, 403:11-18, 407:13 – 408:4; Lauber Tr., 477:10 – 478:19, 479:4-10. Thus, the Gas Companies will bear the burden of establishing the appropriate amount of such costs to be recovered, just as they must do for every other element of their revenue requirement to be recovered in a rate case. *See* 220 ILCS 5/9-201(c); *In re Commonwealth Edison Co.*, ICC Docket No. 05-0597 (Order Dec. 20, 2006) at 127; Lauber Tr., 473:19 –475:2. City/CUB's arguments fail for this reason as well.

Accordingly, the Commission should find that the Reorganization meets the requirements of Sections 7-204(b)(2) and (3).

C. Section 7-204(b)(4)

Section 7-204(b)(4) provides that the Commission must find that "the proposed reorganization will not significantly impair the utility's ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure." 220 ILCS 5/7-204(b)(4). For the reasons set forth in their Initial Briefs, both Staff and the Joint Applicants conclude that the evidence establishes that the Reorganization meets the requirements of Section 7-204(b)(4). JA Init. Br. at 23-24; Staff Init. Br. at 33-34.

City/CUB appears to argue that because it is *possible* that the debt to be incurred by Wisconsin Energy to finance the Reorganization *could* lead to a downgrade by one credit rating agency – Standard & Poor's ("S&P") – of the Gas Companies' long-term issuer rating, the Commission should find that Section 7-204(b)(4) has not been met. *See* City/CUB Init. Br. at 32-36. Lacking in this analysis, however, is any evidence suggesting that in the event such a downgrade were to occur, it would impair, let alone "*significantly* impair" the ability of the Gas

Companies to raise necessary capital or to maintain a reasonable capital structure. The evidence shows that S&P did not downgrade the Gas Companies' credit ratings, but rather, indicated that their outlook was "negative" because the debt to be incurred would leave less room for underperformance in S&P's rating model. *See* Reed Dir., JA Ex. 3.0, 25:504-513. City/CUB ignores the evidence from the Moody's credit rating agency, however, that kept the Gas Companies' ratings stable and found that the merger overall would allow Wisconsin Energy to benefit from a larger size, complementary operations in Wisconsin, and a more diversified operational and geographical footprint. *Id.* at 24:489 – 25:503. Moreover, Staff witness Mr. McNally testified that in the event a downgrade by S&P *does* occur, it likely would be from an A- to BBB+ rating, which would not significantly impair the ability of the Gas Companies to raise capital on reasonable terms. *See* McNally Dir., ICC Staff Ex. 7.0, 6:125-134. Accordingly, City/CUB has failed to rebut the evidence presented by the Joint Applicants that the Reorganization will not significantly impair the ability of the Gas Companies to raise necessary capital.[17]

City/CUB and the AG[18] also argue that the Commission should impose a ring-fence condition on its approval of the Reorganization that limits WEC Energy Group's ability to require the Gas Companies to make dividend payments, or any other cash transfer to WEC Energy Group, before the Gas Companies fulfill their obligations (both in amount and as to timing) to make distribution system modernization capital improvements based on the testimony of City/Cub witness Mr. Gorman. Gorman Reb., City/CUB Ex. 8.0, 7:142-145. Mr. Gorman's

[17] City/CUB's reliance on a February 12, 2015 report from UBS Reports regarding the industry in general (*see* City/CUB Init. Br. at 35) should be given little, if any, weight in light of the fact that it is not a specific analysis based on the facts and circumstances of Wisconsin Energy's acquisition of Integrys, but rather, provides a broad opinion about the utility industry as a whole. Reed Tr., 420:21-22, 427:15-21. As testified by Mr. Reed, UBS Reports issued reports specifically analyzing the merger transaction, and which were "distinctly favorable towards the transaction." Reed Tr., 427:1-14.

[18] The AG adopted City/CUB's request for this condition in its Initial Brief, but did not make any additional arguments in support of this proposal. *See* AG Init. Br. at 67-70.

reasoning for this ring-fence protection is to protect the Gas Companies' system modernization programs and ensure they are given higher priority by the Joint Applicants than payment of dividends from the utilities to their parent company, in light of the amount of acquisition-related debt proposed to be incurred by Wisconsin Energy to fund the acquisition of Integrys. *Id*. at 7:145-150. Mr. Gorman bases his proposal on a belief that the debt funding of the proposed transaction will increase the financial risk of the new WEC Energy Group. *Id*. at 14:293-298.

As an initial matter, it should be noted that Mr. Gorman's analysis regarding dividend payments and capital expenditures fails to address how his stated concern, even if accurate, would create any impairment in the ability of the Gas Companies to raise necessary capital. As Mr. Reed testified, the payment of dividends up from the Gas Companies to the WEC Energy Group would have no impact on the ability of the Gas Companies from raising capital necessary to finance their capital programs. *See* Reed Tr., 414:3-18. Thus, City/CUB's requested ring-fence condition is not necessary to protect the interests embodied in Section 7-204(b)(4).

Moreover, the record evidence demonstrates at least three additional reasons why the Commission should deny Mr. Gorman's proposal. First, the evidence reveals that the Reorganization is expected to result in a stronger more financially stable holding company with both greater financial liquidity and improved access to capital markets. Reed Dir., JA Ex. 3.0, 24:489 – 25:503, 28:571 – 29:589; Reed Reb., JA Ex. 8.0, 6:125 – 7:132, 10:188 – 11:217; Reed Sur., JA Ex. 17.0, 10:197-208; Reed Tr., 409:14 – 410:12. The credit rating agency S&P does not expect that the additional debt used to finance the merger will result in WEC Energy Group's inability to maintain its current credit ratings or impact its cash flows. Reed Reb., JA Ex. 8.0, 20:405-410. Indeed, Mr. Gorman himself does not dispute the fact that the Joint Applicants' projections and S&P's outlook suggest that the Joint Applicants will have adequate cash flows

both to support their acquisition-related debt and to fund their planned capital improvement programs, as Mr. Gorman's original cash flow analysis incorrectly assumed how the acquisition-related debt would be financed and failed to reflect WEC Energy Group's actual cash flows. Gorman Reb., City/CUB Ex. 8.0, 11:224-226; Reed Reb., JA Ex. 8.0, 21:418-427. Mr. Gorman's analysis also incorrectly assumes that the only capital available to spend on the Gas Companies' capital programs is internally generated funds, as funds paid to a parent company as dividends can be returned as equity, or external capital markets are available for debt and for the parent company equity. Reed Tr., 413:17 – 414:18.

City/CUB's and the AG's argument also is based on an analysis performed by Mr. Gorman that is based upon incorrect assumptions that are contradicted by the record evidence. In their argument, City/CUB and the AG rely upon a cash flow analysis Mr. Gorman prepared in conjunction with his direct testimony that he based upon assumptions concerning payments needed by WEC Energy Group to pay its dividends and to service acquisition debt of $1.5 billion to support the assertion that WEC Energy Group will need to draw cash from its utility subsidiaries. *See* City/CUB Init. Br. at 37; AG Init. Br. at 67; City/CUB Ex. 4.0, 15:360 – 16:384; City/CUB Ex. 4.1. This analysis is flawed for several reasons. Mr. Gorman has prepared CUB Exhibit 4.1 based, in large part, on Wisconsin Energy's cash flow projections that were provided to the Credit Rating Agencies in order to assess the credit metric impact of the Transaction before it was completed. Reed Reb., JA Ex. 8.0, 21:415-418. Mr. Gorman's cash flow analysis assumes that Wisconsin Energy will be paying the full amount of principle and interest on the acquisition related debt in 2015; however, this is not reasonable since the merger is not expected to close until the middle of 2015. *Id*. at 21:418-421. Furthermore, while Mr. Gorman's cash flow analysis assumes that the acquisition-related debt will be financed

through an amortizing loan over 15 years, and that debt service will include both principle and interest, Wisconsin Energy plans to go to the capital markets to fund the acquisition-related debt. *Id.* at 21:421-425. Consequently, Mr. Gorman's calculation of debt service payments in his analysis fails to reflect the actual cash flows that Wisconsin Energy will need to make payments on the acquisition-related debt from 2015-2018. *Id*. at 21:425-4427.

Second, the Joint Applicants have made several enforceable commitments in this proceeding that provide adequate assurance that the Gas Companies will continue investing in their infrastructure as is reasonable and appropriate. Lauber Reb., JA Ex. 7.0, 182-188; Reed Tr., 414:19 – 415:1, 415:14 – 416:7. In particular, the Joint Applicants have committed to continue the AMRP, assuming Peoples Gas receives and continues to receive appropriate cost recovery, with a planned 2030 completion date, and to spend minimum amounts on capital expenditures for both Peoples Gas and North Shore during the 2015 through 2017 time period. JA REV. 15.1, at Nos. 5 and 13. Further, the Joint Applicants' commitments to implement Liberty's final recommendations for improving the AMRP, to ensure Peoples Gas works to coordinate with the City in the execution of the AMRP, and to review and attempt to improve their performance with respect to the AMRP on a continuing basis as work on the project progresses also demonstrate a strong assurance that investment in the AMRP will continue after the Reorganization is closed. *Id*. at Nos. 7, 9-11, 35. Mr. Gorman failed to address or respond to the question of why such a restriction is necessary in light of these conditions being in place. Lauber Sur., JA Ex. 16.0, 5:95-97.

Third, Section 7-103 of the Act provides protection and empowers the Commission to take action to stop a parent company from requiring dividends from a utility that would impair its ability to perform its duty to render reasonable and adequate service, as would occur if WEC

Energy Group forced the Gas Companies to make dividend payments to the detriment of their necessary capital investments. *See* Lauber Reb., JA Ex. 7.0, 9:189-200. Section 7-103(2) of the Act prohibits a utility from paying any dividend unless its earnings and earned surplus are sufficient to declare and pay such dividend after provision is made for reasonable and proper reserves, and unless such dividend can be paid "without impairment of the ability of the utility to perform its duty to render reasonable and adequate service at reasonable rates." Accordingly, the Gas Companies are already subject to provisions of the Act which preclude the types of actions that concern Mr. Gorman. Additionally, Section 7-103(1) of the Act authorizes the Commission to order a public utility to cease and desist the declaration and payment of any dividend if the Commission finds the utility's capital has or would become impaired. With the Joint Applicants agreeing to a condition requested by Staff witness Mr. McNally to file all reports by credit reporting agencies specific to the Gas Companies or WEC Energy Group, the Commission will be kept apprised of information that would allow it to act pursuant to Section 7-103(1) to prohibit dividends from the Gas Companies if their credit and financial situation indicated that they would be unable to fund their capital expenditures adequately. Lauber Sur., JA Ex. 16.0, 5:98-112; Staff Group Cross Ex. 1 at 5.

Accordingly, based upon the record evidence, the Commission should deny Mr. Gorman's proposed ring-fencing condition requested by City/CUB and the AG, and find that the Reorganization meets the requirements of Section 7-204(b).

D. Section 7-204(b)(5)

Section 7-204(b)(5) provides that the Commission must find that "the utility will remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of Illinois public utilities." Joint Applicants witness Allen Leverett, President of Wisconsin Energy, testified that under the proposed Reorganization, the Gas Companies will remain

separate Illinois public utilities regulated by the Commission and remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of Illinois public utilities. Leverett Dir., JA Ex. 1.0, 16:343-345. Only the Joint Applicants and Staff submitted testimony regarding Section 7-204(b)(5), and, as set forth in their respective Initial Briefs, the Joint Applicants and Staff agree that the evidence supports the Commission making the findings required by Section 7-204(b)(5). *See* JA Init. Br. at 25; Staff Init. Br. at 34-35.

City/CUB requests that the Commission impose a number of energy efficiency-related conditions on the Reorganization under the auspices of Section 7-204(b)(5) that had been the subject of City/CUB witness Ms. Weigert's testimony. City/CUB, however, fails to explain how forcing the Joint Applicants to engage in conduct beyond what is required under the legislatively prescribed energy efficiency measures provided in Section 8-104 of the Act would be consistent with Section 7-204(b)(5)'s requirement that the Gas Companies remain subject to the laws and regulations governing Illinois public utilities. While City/CUB cites to *In re FairPoint Communications*, ICC Docket No. 04-0299 (Order May 26, 2004) (hereinafter "*In re FairPoint*") in apparent support of its position, this citation is confusing because nowhere in this Order did the Commission impose a reorganization condition pursuant to Section 7-204(b)(5) of the Act. Indeed, the Commission's Order in *In re FairPoint* reflects only a finding by the Commission that the requirement of Section 7-204(b)(5) was met by testimony similar to Mr. Leverett's cited above in this proceeding. *See id*. at 4, 11. The Commission's decision in *In re FairPoint* thus does not support City/CUB's request for energy efficiency conditions pursuant to Section 7-204(b)(5).[19] Rather, it supports the position of the Joint Applicants and Staff that the

[19] It may be that City/CUB meant to include this citation as support for Mr. Gorman's ring-fence condition discussed in the previous section because the Commission did impose a condition limiting the payment of dividends by the utilities involved in this reorganization. *See In re FairPoint* at 6. Even if that were City/CUB's intent, *In re Fairpoint* is inapposite to City/CUB's request for dividend restrictions in this proceeding. The dividend restriction

Commission should make the finding required by Section 7-204(b)(5) based on the evidence presented in this proceeding.

The five conditions requested by City/CUB based on the testimony of City/CUB witness Ms. Weigert are: (1) requiring a contribution of $10 million in Joint Applicants' shareholder funds for energy efficiency programming over and above what is required by law under Section 8-104 of the Act; (2) prepare and issue a public report examining the costs and benefits of implementing energy efficiency through a third party rather than through the utilities; (3) create, maintain and offer an electronically accessible energy usage database for aggregated, building-level energy use, similar to Commonwealth Edison Company's EUDS; (4) work with the City and academic researchers to create an updatable database of actual usage patterns for the Gas Companies' customers; and (5) change the Gas Companies' credit standards for On Bill Financing programs to open the program to more customers and to fund a greater number of measures through the programs. Weigert Dir., City/CUB Ex. 2.0, 3:35 – 4:53.

As discussed in the legal standards section above, conditions imposed on a proposed reorganization should be "of a type necessary to protect the interests of the company and its customers consistent with the interests outlined by Section 7-204(b)." *SBC Communications* at *98-*99 (emphasis added). None of the energy-efficiency conditions proposed by City/CUB here bear any relationship to the interests identified in Section 7-204(b). There is no relation between the acquisition of Integrys by Wisconsin Energy and the need for Joint Applicants to provide additional energy efficiency funding and programs, and requiring improvements in these

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in *In re FairPoint* was imposed based on evidence that FairPoint's ability to raise necessary capital was impaired because its credit ratings were below investment grade. *Id*. at 8-9. Thus, the dividend restriction imposed by the Commission in *In re FairPoint* would be removed once FairPoint's credit rating increased to investment grade. *Id*. at 9. The evidence here demonstrates that this proceeding is not analogous to the facts of *In re FairPoint*, as the Gas Companies' credit ratings are better than the investment grade threshold, and the Reorganization will not change this. *See* McNally Dir., ICC Staff Ex. 7.0, 6:125-134.

programs is beyond the scope of Section 7-204. The evidence is unrebutted that the Gas Companies presently are in compliance with the energy efficiency requirements of Section 8-104 of the Act, and there is no evidence that the Reorganization will change this. Schott Reb., JA Ex. 9.0 REV., 9:177 – 11:218; Schott Sur., JA Ex. 18.0, 7:147-150; Leverett Sur., JA Ex. 15.0, 24:532-536. The Joint Applicants have no plans to change the Gas Companies' energy efficiency programs. Regardless of their ultimate owner, the Gas Companies will be bound to both follow the statutory requirements of Section 8-104 of the Act and the Commission's final Orders approving their energy efficiency plans. Schott Reb., JA Ex. 9.0 REV., 11:232 – 12:240.

Section 7-204 does not contain any requirements concerning energy efficiency or suggestions that the Commission should consider energy efficiency issues in evaluating a proposed reorganization. Leverett Reb., JA Ex. 6.0, 38:939-941. Moreover, there is no evidence in the record that the Reorganization would adversely affect the energy efficiency interests of the Gas Companies or their customers, or that Ms. Weigert's conditions are necessary to protect such interests. Leverett Sur., JA Ex. 15.0, 24:538-541. For these reasons alone, the Commission should deny City/CUB's proposed energy efficiency conditions.

Furthermore, the record evidence contains additional specific reasons for denying these proposed conditions. With respect to the request for an additional $10 million in shareholder funding for additional energy efficiency programming, this proposal would be contrary to the comprehensive statutory requirements in Section 8-104 of the Act for gas utility energy efficiency programs, and it likely would create a situation where the statutory program and the "extra-statutory" program sought by Ms. Weigert would compete or conflict with each other. Schott Sur., JA 18.0, 6:131 – 7:144. Critically, the two previous Commission decisions relied

upon by City/CUB[20] to support the notion that the Commission has imposed conditions with respect to funding energy efficiency programs both pre-date the legislature's enactment of Section 8-104. Consequently, while Ms. Weigert relies on the fact that there was a voluntary agreement by utilities in the reorganization that created Integrys in Docket No. 06-0540 to implement and fund an energy efficiency program, Ms. Weigert ignores the fact that at that time, neither Section 8-104 nor any other state-mandated energy efficiency programs existed. *Id*, at 7:151 – 8:166. Also, the energy efficiency program that resulted from Docket 06-0540 did allow cost recovery pursuant to a rider mechanism. *Id.*; Leverett Reb., JA Ex. 6.0, 39:954-956.

Regarding Ms. Weigert's request for the Gas Companies' On Bill Financing programs to be expanded, Peoples Gas is expanding the range of weatherization measures that will be eligible for On Bill Financing. Schott Reb., JA Ex. 9.0 REV., 14:293-302. However, contrary to Ms. Weigert's request, Peoples Gas cannot unilaterally expand the program to allow customers with lower credit scores to participate because the credit requirements for the program are contractual in nature and set by third-party financiers not under Peoples Gas' control (or the Commission's jurisdiction). Leverett Reb., JA Ex. 6.0, 40:988-998. The credit score to be applied by the financier when it assesses loan requests is stated in the contract, and the financier has a statutory obligation to conduct credit checks or undertake other appropriate measures to limit credit risk. Schott Sur., JA Ex. 18.0, 8:177 – 9:183. Further, if higher risk customers are allowed to use On Bill Financing, Peoples Gas' other customers ultimately may have to pay more through increased amounts under Peoples Gas' uncollectible expense rider. *Id*. at 9:183-185. Also, while Peoples Gas could terminate its contract with its current financier, there is no

[20] *WPS Resources Corp., et al.* ICC Docket No. 06-0540 (Order Feb. 7, 2007) at 24; *Central Ill. Pub. Serv. Co., et al.*, ICC Docket No. 03-0657 (Order Sept. 22, 2004) at 21.

guaranty that a new entity would be willing to negotiate terms allowing for lower credit scores to be accepted. *Id*. at 9:186-188.

With respect to Ms. Weigert's proposed condition requesting the development of a study regarding the potential costs and benefits of a third-party administrator, this request is based upon an incorrect factual assumption that the Gas Companies have an incentive to deliver more natural gas. The Gas Companies have full, symmetrical decoupling in place through Rider VBA and thus do not have any throughput incentive to reduce their energy efficiency goals. Leverett Reb., JA Ex. 6.0, 39:966-975; Schott Reb., JA Ex. 9.0 REV., 13:264-270. Moreover, such a study would be applicable to all gas utilities, not just the Gas Companies, so requiring them to incur the expense and burden of developing the report would be unfair. *Id*. at 39:976 – 40:978. Also, it is significant that the Illinois statutory scheme requires the involvement of the natural gas utility, so the report would be of questionable value, and third-party vendors are already being used to design and implement Peoples Gas' energy efficiency programs. Schott Reb., JA Ex. 9.0 REV., 12:244 – 13:263.

Finally, the proposed conditions to require the development of an energy usage database for use in helping building owners comply with the City's energy "benchmarking" ordinance and to work with the City and researchers to create a database of the customers' usage patterns not only would be burdensome on Peoples Gas, requiring a significant investment of IT resources, but is unnecessary because Peoples Gas already makes the necessary information available to building owners and managers. Leverett Reb., JA Ex. 6.0, 40:979-987; Schott Reb., JA Ex. 9.0 REV., 13:271 – 14:292. Peoples Gas continues to explore ways to assist building owners and managers in complying with the requirements of the City's benchmarking ordinance, but it is the

building owners and managers who have the obligations under this ordinance. Schott Sur., JA Ex. 18.0, 8:167-173.

Accordingly, based on the evidentiary record, the Commission should reject the various energy efficiency conditions requested by City/CUB and find that the proposed Reorganization complies with Section 7-204(b)(5) of the Act.

E. Section 7-204(b)(7)

Section 7-204(b)(7) provides that the Commission must find that "the proposed reorganization is not likely to result in any adverse rate impacts on retail customers." 220 ILCS 5/7-204(b)(7). Based upon the evidentiary record and agreement by Joint Applicants to accept a number of conditions proposed by Staff to mitigate the potential effects a credit downgrade of Wisconsin Energy might have, both the Joint Applicants and Staff agree that the evidentiary record in this proceeding demonstrates that the proposed Reorganization meets the requirements of Section 7-204(b)(7). *See* JA Init. Br. at 26-29; Staff Init. Br. at 35-37.

The AG and City/CUB, however, assert that the Commission should not make the finding required by Section 7-204(b)(7) based on a variety of grounds. None of the arguments presented by the AG and City/CUB have any merit, and each should be rejected.

1. Continuing The AMRP As Previously Planned Cannot Prevent The Reorganization From Meeting Section 7-204(b)(7)'s Requirement

Relying on essentially the same information and analysis they used in support of their Section 2-704(b)(1) arguments (with the same shortcomings) discussed in Section II.A, above, both the AG and City/CUB argue that the Reorganization does not meet the requirement of Section 7-204(b)(7) because the AMRP itself has caused adverse rate impacts. Their theory is that because the AMRP has historically been a driver of rate increases, and Wisconsin Energy has committed to continue the AMRP post-merger, then the Reorganization will adversely

impact rates. The problem with intervenors' argument, however, is that it is not the Reorganization that is causing rates to increase, which is what Section 7-204(b)(7) addresses, but rather, the AMRP itself. In other words, the AG's and City/CUB's complaint is with the AMRP as it has existed prior to the Reorganization even being proposed, and they are trying to use the Reorganization approval process as a forum to make changes to the AMRP.

Again, as the Joint Applicants have asserted earlier in this brief and in other filings, they too, understand that it is important to work towards improvements in the management and implementation of the AMRP. The Commission's standard for approving a merger under Section 7-204, however, is not whether it will improve a utility's performance, enhance the public's interest, or reduce rates. Rather, the touchstone of the Section 7-204 analysis is for the Commission to determine that if it approves the Reorganization, there will be no harm or diminishment to existing service quality or increases in existing rates caused by the Reorganization. *AGL-Nicor Merger* at 13, 77; *In re GTE Corp. and Bell Atlantic Corp.*, ICC Docket No. 98-0866, 1999 Ill. PUC Lexis 825 at *28 (Oct. 29, 1999). Therefore, this proceeding is not the proper place to examine and make changes to the AMRP.

With respect to the pace of the AMRP, contrary to the AG's suggestion, Wisconsin Energy has committed only to continue the AMRP on the same basis as Peoples Gas currently is doing: continuing the AMRP with the intention, assuming it receives and continues to receive appropriate cost recovery, of completion by 2030. *See* Leverett Sur., JA Ex. 15.0, 180-184. This is nothing more or less than Integrys' and Peoples Gas' current pre-existing plan. *See* Schott Reb., JA Ex. 9.0 REV., 4:75-77. This maintenance of the status quo with respect to the planned completion date of the AMRP if the Reorganization is approved will not cause rates to be impacted any differently than would have occurred in the absence of the Reorganization. *AGL-*

Nicor Merger at 13, 77; *SBC Communications*, at *26-*27, *98-*99. Accordingly, intervenors' arguments should be rejected and the Commission should find, based on the record as a whole, that the Reorganization will meet the requirements of Section 7-204(b)(7) for the reasons argued here as well as in the Joint Applicants' (and Staff's) Initial Brief.

2. The Commission Should Reject City/CUB's Proposed AMRP Condition That Would Create An Ill-Defined And Unnecessary Reporting And Penalty System That May Conflict With Recommendations From Liberty's Final Report

City/CUB proposes a condition that would require Peoples Gas to provide additional reporting and to improve its performance in six operational categories (adherence to schedule, adherence to budget, change order spending and communication, management reserve spending and budgeting, time to close Field Order Authorizations and Change Orders, and contractor hits on facilities) with financial penalties for failing to improve. Cheaks Reb., City/CUB Ex. 7.0, 2:13-17, 2:21 – 3:31. The Commission should reject this condition for several reasons.

First, as discussed throughout this brief and the Joint Applicants' Initial Brief with respect to conditions being proposed by City/CUB and the AG of this nature, this proposal goes beyond the scope of Section 7-204's purpose, which is to prevent diminishment of service quality or adverse impacts as a result of the Reorganization. *See*, *e.g.*, *AGL-Nicor Merger* at 13, 77; *In re GTE Corp. and Bell Atlantic Corp.*, ICC Docket No. 98-0866, 1999 Ill. PUC Lexis 825 at *28 (Oct. 29, 1999). City/CUB's proposed reporting and penalty system, on the other hand, is aimed at addressing existing problems the City is complaining about with respect to past AMRP and operational performance by Peoples Gas, and fails to identify any adverse impact or diminishment of service that otherwise would be caused by the Reorganization. *See* Leverett Sur., JA Ex. 15.0, 9:201 – 10:206. Imposing this conditions to improve or "fix" what City/CUB believes to be wrong with the AMRP would be contrary to the intent of Section 7-204, which is

to sustain the utility's service quality status quo, not to achieve quality improvements. *AGL-Nicor Merger Inc.,* at 13.

As the Joint Applicants have explained in their testimony and other briefing, and as reflected in their agreed conditions regarding the implementation of recommendations from Liberty's final report, it is not and has never been the position of the Joint Applicants that the AMRP should proceed "as is" if the current approaches are problematic or could be improved. Leverett Sur., JA Ex. 15.0, 10:219 – 11:232. However, given the scope and purpose of Section 7-204, this proceeding is not the proper forum for investigating, evaluating, and implementing fixes to Peoples Gas' existing operations, including the AMRP. Indeed, as acknowledged by Mr. Cheaks, the ongoing Liberty investigation ordered by the Commission and its recommendations will address the same issues as his proposed conditions. *See* Cheaks Supp., City/CUB Ex. 9.0, 5:81, 8:138-143. Thus, it is in the context of the process established by the Commission for Liberty's investigation and implementation of its recommendations that these issues should be addressed, not here in a Section 7-204 proceeding while Liberty's investigation remains ongoing.[21] Indeed, because, as Staff witness Mr. Stoller states in his rebuttal testimony, Liberty's interim findings are preliminary and subject to change (*see* ICC Staff Ex. 8.0, at 10:176-180), it may be that the particular conditions proposed by the AG and City/CUB now could conflict and/or interfere with the final recommendations that Liberty will make in its final report.

This is particularly so here where City/CUB has offered only the barest of outlines and has not provided a detailed proposal in the record setting forth the information and standards that

[21] In response to the Liberty Interim Report, Mr. Cheaks also requested that the Joint Applicants be ordered to provide a work plan and report to the City specifically addressing Liberty's recommendations with timelines for when each recommendation would be addressed, by December 1, 2015. Cheaks Supp., City/CUB Ex. 9.0, 8:138-143. Imposing such a condition would further interfere with the established verification process established for implementing Liberty's final recommendations in the Commission's *Peoples Gas 2012 Rate Case* Order.

would be necessary for the Commission to actually establish and administer such a program. This information would include, at a minimum, exactly how each of the six metrics is defined, how these metrics would be measured and monitored on an ongoing basis, how the baseline would be established for each metric and a reasonable basis for choosing that baseline, the establishment of reasonable target goals for each metric and defining the performance scale to determine when a penalty would be imposed, and determination of appropriate penalties to be imposed. Absent this detail – none of which is in the record here – the Commission cannot implement this program.

The Joint Applicants also have identified specific problems with the requested condition. Joint Applicants' witnesses Mr. Schott and Mr. Giesler explained in their testimony that the additional reporting requested by Mr. Cheaks as part of this proposal is either redundant of existing AMRP reporting requirements, or would add little value to the massive amounts of information that Peoples Gas already provides to the Commission regarding AMRP, and the information already being provided to the City. Schott Reb., JA Ex. 9.0 REV., 5:106 – 7:137; Schott Sur., JA Ex. 18.0, 4:81 – 5:100; Giesler Reb., JA Ex. 10.0, 7:145 – 9:179; Giesler Tr., 305:21 – 306:22. Mr. Cheaks' proposal for a Commission monitoring program for six specific operational areas with financial penalties for failure to show improvements is duplicative of the monitoring, auditability and transparency that already exists for the AMRP. Schott Reb., JA Ex. 9.0 REV., 7:146 – 8:163; Giesler Reb., JA Ex. 10.0,9:194 – 11:239; Giesler Sur., JA Ex. 19.0, 5:104 – 7:139. In an analogous situation, the AG requested that the Commission impose conditions requiring ComEd to comply with additional reporting requirements concerning its operations in an order approving the sale of a generating plant. *Commonwealth Edison Co.*, ICC Docket Nos. 99-0273/99-0282 (Cons.), 1999 Ill. PUC. LEXIS 551 at *80-82. (Order Aug. 3.

1999). The Commission denied the AG's request as unnecessary, because "virtually all of this information is or will be available to the Commission in the future," or else the Commission could request submission of data it wants at any time. *Id*. at *85-*86. The Commission should deny the City/CUB proposal for the same reason in this proceeding, too.

Thus, for these reasons, the Commission should deny this AMRP-related condition requested by City/CUB, as well.

3. The Evidence Demonstrates That The Gas Companies' Cost Of Capital Is Not Likely To Increase As A Result Of The Reorganization

Contrary to City/CUB's suggestions, there is no evidence that the Reorganization is *likely* to cause the Gas Companies' costs of capital to increase due to higher debt costs. S&P putting the Gas Companies' credit ratings on a "negative" outlook does not mean that their S&P credit ratings are certain to fall, or even that such an occurrence is likely. At most, as Staff witness Mr. McNally testified, this means that a credit downgrade is "possible," based upon S&P's own definition of a negative outlook means that "a rating may be lowered.". *See* McNally Dir., ICC Staff Ex. 7.0, 9:185-195 (emphasis added).

Section 7-204(b)(7)'s standard does not require that the Joint Applicants must prove that there is no "possibility" of a rate increase, only that an adverse rate impact is not likely. Here, where the S&P outlook information is examined with the whole of the record, the overwhelming evidence supports the conclusion that a credit downgrade is not likely, and, if one occurs, that an adverse rate impact resulting from that downgrade also is not likely. The other credit rating agency – Moody's – kept the Gas Companies' ratings stable and found that the merger overall would allow Wisconsin Energy to benefit from a larger size, complementary operations in Wisconsin, and a more diversified operational and geographical footprint. *Id.* at 24:489 – 25:503. Further, there is significant evidence that there likely could be long-term reductions in

the Gas Companies' debt costs as the Reorganization may enhance the Gas Companies' access to capital. *See* Lauber Supp. Dir., JA Ex. 5.0, 11:202-205; Reed Dir., JA Ex. 3.0, 28:576 – 29:589; City Group Cross Ex. 1 at 6 (JA response to data request City 2.21 sub. (b)(iv)). And, in the event of a credit downgrade by S&P, the conditions put in place by agreement between the Joint Applicants and Staff witness Mr. McNally will work to prevent increased costs of debt from likely having an adverse impact on the Gas Companies' rates.

Accordingly, this argument fails to support City/CUB's position that the Commission should deny its approval of the Reorganization.

4. Transition Costs Are Not Likely To Have An Adverse Impact On Rates Because They Will Be Recoverable Only To The Extent The Gas Companies Can Meet Their Burden Of Demonstrating That They Are Prudent And Reasonable And That They Are Being Recovered Only To The Extent They Produce Savings

City/CUB's arguments regarding the Joint Applicants' mechanism for tracking transition costs being likely to cause an adverse rate impact are unfounded and should be rejected. As an initial matter, however, it must again be noted that City/CUB unfairly extrapolates a statement about when two of the Joint Applicants' witnesses talked about how to respond to a data request on treatment of hypothetical transaction costs and savings (*see* Reed Tr., 408:5 – 409:2) into a conclusion that the Joint Applicants had "neglected" the development of a process for the tracking of transaction costs and related savings. *See* City/CUB Init. Br. at 68. Predating the data requests in question, the Joint Applicants had described their model for tracking transition costs and savings in their testimony. To track and monitor transition costs and savings, the Joint Applicants will use a spreadsheet model operating in parallel with their existing accounting systems similar to what has been used in other utility mergers. Reed Sur., JA Ex. 17.0, 6:117 – 7:122. As used with other mergers, the model to be used will be multi-layered allowing granular as well as higher-level tracking to occur. *Id.* at 7:122-126.

In any event, for purposes of the Reorganization's compliance with Section 7-204(b)(7), City/CUB's argument on this issue is a red-herring. The relevant standard is whether the Reorganization is "likely to result in any adverse rate impacts." 220 ILCS 5/2-704(b)(7). With respect to transition costs, they will have no impact on rates unless and until there is a rate case in which a transition cost is approved for recovery by the Commission. Before that can happen, the Joint Applicants will bear the burden of proving to the Commission's satisfaction that:

- An identified transition cost has been incurred (or, for a future test year rate case, that like other costs it is based upon a reasonable forecast);
- That the cost is prudent and reasonable; and
- That the transition cost has generated savings equal to or greater than the cost being recovered

See Reed Tr., 369:14 – 370:8, 379:16 – 380:2, 403:11-18, 407:13 – 408:4; Lauber Tr., 477:10 – 478:19, 479:4-10. These obligations are based on the following conditions agreed to by Joint Applicants with Staff (numbering is from JA Ex. 15.1 REV.):

> 17. The Gas Companies shall separately identify and track transaction costs and transition costs.
>
> 19. Allocation of any savings resulting from the proposed reorganization shall flow through to ratepayers.
>
> 21. Transition costs may be recoverable to the extent the transition costs produce savings.

Kahle Reb., ICC Staff Ex. 11.0, 5:87 – 6:113; Lauber Sur., JA Ex. 16.0, 9:210 – 11:248; JA Ex. 15.1 REV., at Nos. 17, 19, 21; 220 ILCS 5/9-201(c).

As acknowledged by the Joint Applicants, the effect of these conditions is that before they can recover any transition costs, they have the obligation to produce sufficient evidence to establish that these conditions are met – *i.e.*, that before a transition cost can be recovered, it has

produced net savings. Reed Tr., 403:15-18; Lauber Tr., 477:5-17. Because identification of savings thus will be an element of the Gas Companies' recovery of any transition cost, they will bear the burden presenting evidence and persuading the Commission that this standard has been met. *See In re Commonwealth Edison Co.*, ICC Docket No. 05-0597 (Order Dec. 20, 2006) at 127.

Further, with respect to future test year rate cases, the Gas Companies will bear the same burden they do with respect to the rest of their revenue requirement that is based upon a future test year forecast to establish forecasts of transition costs and the savings they will produce. *See* Lauber Tr., 471:16-22, 473:19 – 474:1, 474:8-11. While City/CUB attempts to argue that the treatment of transition costs being forecasted in a future test year rate case is a special case because the actual savings could turn out to be difference than forecasted, leading to some amount of over-recovery of transition costs for that period. But, this is no different than any other cost forecasted for recovery in a future test year rate case – it is possible that actual costs are more or less than what was forecasted. *See* Schott Reb., JA Ex. 9.0 REV., 19:407-410 (discussing fact that actual paving costs millions of dollars higher than amount forecasted for Peoples Gas revenue requirement proposed in *Peoples Gas 2014 Rate Case*). Thus, as with any other revenue requirement item, it is possible that actual savings could be lower (or higher) than forecasted relative to the transition costs approved for recovery.

Moreover, City/CUB's concern about receiving a lack of detail about the actual tracking mechanism to be used by Joint Applicants also is unfounded because the Joint Applicants will not seek to recover any transition costs that are incurred prior to the test year for the first post-Reorganization rate cases, which must provide for no increase in rates to be effective earlier than two years after closing of the Reorganization. *See* Reed Tr., 405:19 – 406:12. This is another

reason why City/CUB's alleged lack of a transition cost mechanism being provided in detail at this time will not (and cannot) result in any impact on rates.

Thus, the Commission should reject City/CUB's arguments and find that the Reorganization meets the requirements of Section 7-204(b)(7).

5. The Length Of The Joint Applicants' Commitment Not To Seek An Increase In Base Rates Is Reasonable And Should Not Be Lengthened

The Joint Applicants have committed that they will not to seek any change in the base rates set by the Commission for the Gas Companies in the final Order of their recent rate cases issued on January 21, 2015, as modified by the Commission's February 11, 2015 Second Amendatory Order in that proceeding, to be effective any earlier than two years after the Reorganization is closed. Leverett Dir., JA Ex. 1.0, 21:446-464; Reed Dir., JA Ex. 3.0, 8:154-161. City/CUB and the AG request that the Commission modify the Joint Applicants' commitment not to seek a change in base rates to be effective any earlier than two years from the close of the Reorganization to be a five-year commitment based on the testimony of City/CUB witness Mr. Gorman. Gorman Dir., City/CUB Ex. 4.0, 9:209 – 10:232. Mr. Gorman's stated purpose for this modification is to provide customers "assurance of benefits from the reorganization." *Id*. at 231-232. This request should be denied for several reasons.

First, as has been discussed earlier, the purpose of the Commission's evaluation of a proposed reorganization under Section 7-204 is not to create benefits or other enhancements in a utility's service quality before approving a reorganization Rather, the standard under Section 7-204 is that the Commission should make the required findings and approve a reorganization if it will at least maintain the utility's status quo and not diminish or adversely impact the utility's service quality or rates. *See*, *e.g.*, *In re GTE Corp. and Bell Atlantic Corp.*, ICC Docket No. 98-0866, 1999 Ill. PUC Lexis 825 at *28 (Oct. 29, 1999). Accordingly, Mr. Gorman's stated

reasons for this proposed modification are not appropriate grounds for the Commission to impose a condition under Section 7-204. *See AGL-Nicor Merger* at *77 (conditions should protect interests to maintain the status quo, not enhance those interests)

Second, while Mr. Gorman references Peoples Gas' Rider QIP as a reason why the Gas Companies could withstand a longer period before seeking to increase their rates, Mr. Gorman's analysis fails to account for the fact that North Shore does not have a Rider QIP or any other means to recover capital expenditures between rate cases. Moreover, Mr. Gorman fails to account for the cap in Rider QIP recoveries that can only be reset by the filing of a rate case. Leverett Reb., JA Ex. 6.0, 34:850-858; Leverett Sur., JA Ex. 15.0, 21:467-73.s

Third, Mr. Gorman's analysis fails to account for how various updates to CDOT's regulations have led to dramatic increases in the costs of performing operational work on Peoples Gas' facilities in the City. Leverett Reb., JA Ex. 6.0, 34:858-861. These increases have caused a significant amount of costs that Peoples Gas will incur in 2015 but will be unable to recover in the rates set in the *Peoples Gas 2014 Rate Case* due to the timing of the City's regulations being updated (*i.e.*, the updates took place too late to be included in the analysis for the 2015 test year in the rate case). *Id*. at 34:861-864. And, because these costs are operational in nature, they are not recoverable under Rider QIP. *Id*.

Finally, as Joint Applicants witness Mr. Reed has testified, an extended commitment to not seek a change in base rates is unnecessary and not the vehicle by which customers may derive benefits from the Reorganization. Reed Sur., JA Ex. 17.0, 5:82-83. The Joint Applicants expect that there will be net savings, over time, as they integrate their management, systems and operations, and these savings will be reflected in future rate proceedings for the benefit of Illinois customers by way of reduced operating expenses or lower capital costs. *Id*. at 5:83-87.

For these reasons, the Commission should deny the modification of the Joint Applicants' commitment to not seek an increase in base rates to be effective sooner than two years after the close of the Reorganization.

* * *

Accordingly, based on the evidentiary record and for the reasons stated in the Joint Applicants' Initial Brief and herein, the Commission should find that the proposed Reorganization complies with Section 7-204(b)(7) of the Act.

III. SECTION 7-204(f) CONDITIONS

A. The Commission Should Adopt a Two-Year Period for Development of a PSMS as Proposed by The Joint Applicants

As reflected in their initial briefs, there is no dispute between the Joint Applicants and Staff as to whether a PSMS based upon the American Petroleum Institute ("API") Recommended Practice ("RP") 1173 should be developed and implemented by the Gas Companies. Indeed, in testimony, the Joint Applicants stated that they do not oppose the implementation of a PSMS. *See* Webb Reb., JA Ex. 11.0, 5:96. The only difference in positions is how long should be allotted for the Gas Companies and Staff to work together to develop a PSMS to be implemented by the Gas Companies – one year (Staff's position) or two years (the Joint Applicants' position).[22] Based on the evidence, it would be more appropriate for the Commission to allow two years for a PSMS to be developed for implementation by the Gas Companies.

[22] The Joint Applicants do not agree that the adoption of a PSMS is "necessary" to protect the interests of the Gas Companies and their customers, and state that adopting a PSMS would be an "enhancement" of public interest rather than a measure designed to protect the status quo as authorized under Section 7-204(f). *See AGL-Nicor Merger* at 77. Nevertheless, in an effort to narrow the issues and seek compromise with Staff, the Joint Applicants have agreed to a condition requiring the development of a PSMS with Staff that would be implemented by the Gas Companies when completed and approved by the Commission.

As noted in Staff's Initial Brief (at 18, n. 2), the document upon which a PSMS would be based – API RP 1173 – is not yet finalized and has not been issued in final form. Consequently, at this time, the Commission, Staff and the Gas Companies can only speculate as to what exactly may be required to develop and establish a PSMS in accordance with the document to be issued by the API. In any event, what is known for a certainty is that no model exists for a PSMS that has been developed for or adopted by a natural gas distribution company. Webb Reb., JA Ex. 11.0, 4:77-82; Smith Reb., ICC Staff Ex. 10.0, 2:26-30. This is an important point because based on its current draft form, the API RP 1173 will not provide a "precise roadmap" for what a PSMS should look like or include, but rather will be a collection of general concepts and principles (*see* Staff Init. Br. at 18-20) to be used in developing a system to manage pipeline safety. *See* Webb Reb., JA Ex. 11.0, 4:84 – 5:102. Thus, the Gas Companies and Staff will be working from a "blank slate" and will need to develop the specifics of a PSMS that would be appropriate for the Gas Companies' operations from the ground up. *Id*. In doing so, the Gas Companies and Staff will need to evaluate carefully how the PSMS and its implementation should fit with and not conflict or unduly disrupt other essential ongoing pipeline safety tasks. *See id*. at 5:103 – 7:138. This will be a process that likely will take a significant amount of time and, given that the goal of the PSMS will be to provide long-term benefits from changing organizational culture, appropriate time and care should be devoted to ensuring that the PSMS developed is one that will work for the Gas Companies. *See id*. at 6:123 – 7:138. A two-year development period, therefore, is more appropriate under the circumstances.

Further, the proposed development of the PSMS by the Gas Companies and Staff will coincide with the implementation of recommendations from Liberty's final report of its investigation of the AMRP. Consequently, the Gas Companies and Staff will need to ensure that

the PSMS being developed is consistent with and causes no conflict with any processes that are implemented in response to Liberty's final recommendations. Indeed, while containing only preliminary findings and recommendations that are subject to change, the Joint Applicants note that Liberty's Interim Report provides an indication that Liberty's final report could include recommendations related to safety management. *See* ICC Staff Ex. 8.0, Attach. A CONF. at 24-25. Liberty is expected to issue the final report of its investigation phase by mid-2015, which will be followed by a period in which Staff, Peoples Gas and Liberty work to determine what recommendations from that report should be implemented and in what manner. Stoller Reb, ICC Staff Ex. 8.0, 11:196-200. There will then be a two-year verification phase in which Liberty will be working with Peoples Gas on implementation of its recommendations. *Id*. at 11:200-201. Based on this timeframe, therefore, the two-year period proposed by the Joint Applicants would better allow for the Gas Companies and Staff to ensure that the PSMS they develop is consistent and coordinated with the recommendations being implemented from Liberty.

Accordingly, for the reasons stated above and in the Joint Applicants' Initial Brief, the Commission should adopt the Joint Applicants' version of a condition requiring the Gas Companies to develop a PSMS with Staff within two-years after the close of the Reorganization. *See* Appendix A, No. 14.

B. The Commission Should Reject the Remaining Conditions Sought Under Section 7-204(f)[23]

1. Requiring Movement Of Inside Meters

Staff has requested that the Commission impose the following condition on its approval of the Reorganization pursuant to Section 7-204(f) regarding the movement of Peoples Gas' inside meters:

> Any meter that is part of AMRP should be moved outside or to an accessible location inside as part of AMRP by no later than 2030. Any meter not part of AMRP today or going forward must be moved outside or to an accessible location inside within 10 years.

See Staff Init. Br. at 29. Staff bases this request on a past history of difficulties that Peoples Gas had encountered with obtaining access to inside meters to complete its inside safety inspections required by federal pipeline safety regulations. *Id*. at 23-25.

The Joint Applicants agree with the goal of moving as many meters currently located inside customers' premises to the outside or accessible indoor locations. *See* Webb Reb., JA Ex. 11.0, 7:152-156; Webb Sur., JA Ex. 20.0, 3:64-65. Indeed, the first sentence of Staff's proposed condition is consistent with Peoples Gas' existing AMRP plan, and, to support this goal the Joint Applicants have proposed an additional condition that would require the development of a new standardized process, to be reviewed by Staff, for determining when to leave a meter inside or in a decentralized location. Webb Sur., JA Ex. 20.0, 3:61 – 4:76. With respect to the second sentence of Staff's proposed condition, however, Staff's request for the Commission to impose a requirement on the Joint Applicants to move all inside meters that are not part of the AMRP outside or to an accessible location within 10 years should be rejected, as it is problematic for several reasons.

[23] This section addresses all conditions proposed by Staff, the AG, and/or City/CUB not specifically addressed elsewhere in connection with a particular provision of Section 7-204(b) or the AMRP Investigation Docket that the Joint Applicants contend should not be imposed by the Commission in this proceeding.

As discussed in the legal standards section above, Section 7-204(f) gives the Commission permissive authority to impose a condition on a reorganization when, in its judgment, such condition is "necessary to protect the interests of the public utility and its customers." 220 ILCS 5/7-204(f). Such conditions must be consistent with the interests set forth in Section 7-204(b) and are to protect the status quo, not "enhance" the interests of the utility and its customers. *SBC Communications*, at *97-*99; *AGL-Nicor Merger* at 77. Here, there has been no showing that imposing this additional requirement that would require the creation of a new capital program in addition to AMRP is "necessary" to protect the interests of Peoples Gas or its customers. While having meters moved to the outside would make it easier and more convenient for Peoples Gas to conduct required federal safety inspections, Staff has failed to show that it is "necessary" to do so. The federal regulations at issue assume that there will be inside meters to be inspected and, although difficult, Peoples Gas demonstrated that it can comply with the inspection requirements even with meters being located inside customers' premises. *See* Staff Init. Br. at 25. Indeed, it should become easier for compliance to be achieved as the universe of existing inside meters shrinks due to the movement of meters as part of the AMRP. The existence of inside meters that need to be inspected is a long-standing condition of Peoples Gas' service territory, and Staff has not argued that the Reorganization threatens the existing ability of Peoples Gas to comply with its required inside safety inspections. Requiring the movement of non-AMRP meters, therefore, would be a potential enhancement, not protection, of utility and its customers' interests. Thus, the second sentence of Staff's proposed condition is not an appropriate condition for the Commission to impose on the Reorganization pursuant to Section 7-204(f).

Furthermore, the evidence demonstrates that there are practical problems with imposing such a requirement. As testified by Joint Applicants witness Thomas Webb, it is not reasonably

feasible to move all meters outdoors in light of there being physical and legal constraints on the ability of Peoples Gas to place meters outside in all situations. Webb Reb., JA Ex. 11.0 at 8:176 – 9:185. While Staff dismisses this testimony as an assertion that "bears little scrutiny" in its Initial Brief (at 26), Staff recently agreed in a stipulation made part of a Commission Order that:

> It will not be feasible to move 100% of [Peoples Gas'] meters outdoors or to a central, accessible location. For example, Peoples Gas cannot place meters in the public right-of-way, and this constrains placing meters outdoors at premises where the building abuts the property line. As a second example, in buildings with many individual meters, space limitations (outdoors or in a central, accessible location in the building) or the complexity of re-piping the premises may constrain moving the meters.

Illinois Commerce Comm'n v. The Peoples Gas Light and Coke Company, ICC Docket No. 13-0460 (Order, Jan. 28, 2015) at 4.

Furthermore, a requirement to start a new program to move all meters outside of the AMRP in 10 years *in addition to* what also is being done to move meters as part of the AMRP would greatly increase costs for Peoples Gas' customers. Webb Sur., JA Ex. 20.0, 3:46-60. Mr. Webb testified that such a program would increase the current workload being done to move meters as part of the AMRP by over 14%. *Id*. Not only would this add significant capital costs to be recovered from customers in addition to AMRP costs, but the strain on Peoples Gas' resources to conduct this additional capital program could delay the current AMRP schedule. *Id*. Thus, this portion of Staff's proposed condition likely would not be beneficial to the interests of Peoples Gas or its customers.

Accordingly, the Commission should deny Staff's request for a condition that requires the movement of non-AMRP inside meters to the outside or to an accessible location within 10 years after the Reorganization. Such a condition would be outside the scope of Section 7-204(f) for the reasons stated above and in the Joint Applicants' Initial Brief.

2. AMRP-Related Proposals

Both the AG and CUB/City propose additional AMRP-related conditions to be issued under the Commission's authority under Section 7-204(f) based on the testimony of their respective witnesses, Mr. Coppola and Mr. Cheaks.

AG witness Mr. Coppola requests conditions that would require annual reporting of actual versus forecasted investments and benefits realized from the AMRP to date, presentation of detailed annual work plans with Main Ranking Index and cost information, along with corrective action and implementation plans for improved coordination with the City and recommendations from the Liberty final report. Coppola Reb., AG Ex. 4.0, 35:683 – 36:699. Mr. Coppola also proposes a condition that would require an evaluation of the AMRP and "scaling" of the program to a level that is "manageable," targets high-priority, high-risk segments, is cost-effective, and minimizes the impact of the AMRP on customer rates. *Id*. at 35:676-682.

City/CUB also proposes three AMRP-related conditions based on the testimony of City/CUB witness Mr. Cheaks: (1) require Peoples Gas to produce weekly, block-by-block schedules of construction activities on a five-year, annual, and monthly basis; (2) require Field Order Authorizations ("FOAs") or Change Orders to be communicated within 24 hours of approval to the Chicago Department of Transportation; and (3) require the Joint Applicants to provide a project work plan and report to the City that addresses the recommendations of Liberty report, with timelines of when each recommendation would be addressed. Cheaks Reb., City/CUB Ex. 7.0, 2:13-17, 2:21 – 3:31.

As explained in detail in the legal standards section above, the Commission has traditionally interpreted and applied Section 7-204(f) to limit the Commission's authority to impose conditions that are "necessary to protect the interests of the company and its customers

consistent with the interests outlined by Section 7-204(b)." *SBC Communications*, at *98-*99 (emphasis added). The interests set out in Section 7-204 to be protected by such conditions are focused on preventing diminishment of service quality and not to enhancements. *See AGL-Nicor Merger* at 77; *In re GTE Corp.*., ICC Docket No. 98-0866, 1999 Ill. PUC Lexis 825 at *28.

Based on this standard for Section 7-204(f) conditions, it is clear that the Commission should reject these additional AG and City/CUB proposed conditions because they are not related to any of the findings required under Section 7-204. The AG and City/CUB have not clearly tied their requests to any of the particular findings that the Commission is required to make in order to approve a proposed reorganization under Section 7-204. Rather, the intervenors AG and City/CUB have asserted that the Commission should impose a laundry list of additional conditions unrelated to Section 7-204. As explained above, Section 7-204 does not require that a proposed reorganization improve a utility's existing service levels for the Commission to approve it, and focuses the Commission's determination on whether the reorganization, if approved, would adversely affect customers or diminish service quality. For the reasons explained below, these additional conditions requested by the AG and/or City/CUB are not necessary to prevent the Reorganization from having any adverse impact on the Gas Companies or service quality – indeed most are unrelated to the Reorganization at all – and thus should be denied by the Commission.

First, each of the requested conditions addresses an existing or ongoing issue with Peoples Gas' AMRP that is unrelated to Wisconsin Energy or the proposed Reorganization. Leverett Sur., JA Ex. 15.0, 9:201 – 10:206. In other words, none of these requested conditions addresses or seeks to protect Peoples Gas or its customers from an identified adverse impact or diminishment of service that would be caused by the Reorganization. Rather, these conditions

seek to enhance or fix perceived problems with the existing AMRP and operational performance. *See*, *e.g.*, Coppola Dir., AG Ex. 2.0, 34:680-681 (recommending that approval of the proposed Reorganization be conditioned on "improving the current operation of the AMRP"). Again this is not consistent with the intent of Section 7-204, which is to sustain or protect the utility's service quality status quo, not to achieve quality improvements. *AGL -Nicor Merge* at 13, 77.

As the Joint Applicants have explained in their testimony and other briefing, and as reflected in their agreed conditions regarding the implementation of recommendations from Liberty's final report, it is not and has never been the position of the Joint Applicants that the AMRP should proceed "as is" if the current approaches are problematic or could be improved. Leverett Sur., JA Ex. 15.0, 10:219 – 11:232. However, given the scope and purpose of Section 7-204, this proceeding is not the proper forum for investigating, evaluating, and implementing fixes to Peoples Gas' existing operations, including the AMRP. Indeed, as acknowledged by Messrs. Coppola and Cheaks, the ongoing Liberty investigation ordered by the Commission and its recommendations will address the same issues as their proposed conditions. *See* Coppola Supp., AG Ex. 5.0, 11:231-239; Cheaks Supp., City/CUB Ex. 9.0, 5:81, 8:138-143. Thus, it is in the context of the process established by the Commission for Liberty's investigation and implementation of its recommendations that these issues should be addressed, not here in a Section 7-204 proceeding while Liberty's investigation remains ongoing.[24]

Indeed, because, as Staff witness Mr. Stoller states in his rebuttal testimony, Liberty's interim findings are preliminary and subject to change (*see* ICC Staff Ex. 8.0, at 10:176-180), it may be that the particular conditions proposed by the AG and City/CUB now could conflict

[24] In response to the Liberty Interim Report, Mr. Cheaks also requested that the Joint Applicants be ordered to provide a work plan and report to the City specifically addressing Liberty's recommendations with timelines for when each recommendation would be addressed, by December 1, 2015. Cheaks Supp., City/CUB Ex. 9.0, 8:138-143. Imposing such a condition would further interfere with the established verification process established for implementing Liberty's final recommendations in the Commission's *Peoples Gas 2012 Rate Case* Order.

and/or interfere with the final recommendations that Liberty will make in its final report. This is particularly true with respect to City/CUB's proposed condition that would require the development of a work plan and timelines to address recommendations from Liberty based upon *the City's* timeframe, rather than the Liberty auditors or Staff. Approving this condition, therefore, would be tantamount to inserting another party into the audit process who may have different interests and focus than Liberty. *See* Feb. 18, 2015 Notice of ALJ's Ruling (noting the harm that would be cause by allowing a Commission-ordered audit to be publicly disputed). Again, as discussed in connection with Section 7-204(b)(1) above, the better course of action than implementing piecemeal "patches" from multiple parties to fix what each believes to be the problem with the AMRP, is to allow the systematic and thorough year-long investigation by the Commission's chosen expert – Liberty – to be concluded and the established process for systematically implementing Liberty's final recommendations to proceed. Adopting the various AMRP-related conditions proposed by the AG and City/CUB threatens to cause conflicts with that process and the orderly implementation of Liberty's recommendations.

The Joint Applicants also have addressed specific problems with the requested conditions themselves. Joint Applicants' witnesses Mr. Schott and Mr. Giesler explained in their testimony that the additional reporting requested by Messrs. Coppola and Cheaks is either redundant of existing AMRP reporting requirements, or would add little value to the massive amounts of information that Peoples Gas already provides to the Commission regarding AMRP, and the information already being provided to the City. Schott Reb., JA Ex. 9.0 REV., 5:106 – 7:137; Schott Sur., JA Ex. 18.0, 4:81 – 5:100; Giesler Reb., JA Ex. 10.0, 7:145 – 9:179; Giesler Tr., 305:21 – 306:22. In situations like this where a party is requesting the Commission to impose additional reporting requirements that are redundant to information that the Commission already

receives or can readily obtain, such a request should be denied as unnecessary. *See Commonwealth Edison Co.*, ICC Docket Nos. 99-0273/99-0282 (Cons.), 1999 Ill. PUC. LEXIS 551 at *80-82, *85-*86. (Order Aug. 3. 1999). Here, the Commission should deny the AG's and City/CUB's requests as unnecessary, as the Commission already receives or can readily obtain the information at issue.

Further, both the AG's and City/CUB's proposed conditions would create practical problems. Mr. Coppola's suggested evaluation and scaling of the AMRP with a focus only on "high risk segments" of pipe would lead to inefficiencies and duplication of effort in the project. Giesler Reb., JA Ex. 10.0, 4:78 – 5:95. Mr. Cheaks' requested condition on the production of FOAs and Change Orders within 24 hours of their approval to the Chicago Department of Transportation ("CDOT") would create unnecessary burdens, and likely would conflict with confidentiality restrictions contractually imposed on Peoples Gas by its contractors. Giesler Sur., JA Ex. 19.0, 5:89-103.

Accordingly, the Commission should deny these additional AMRP-related conditions for the reasons stated above.

C. Construction Fines and Penalties

The AG in its Initial Brief (at 60-61) lists as conditions that should be imposed in this proceeding a condition that would credit Peoples Gas customers for construction fines and penalties that had been included in base rates or riders since 2011, and another condition forbidding the future recovery of fines and penalties in rates going forward. The evidence in the record, however, establishes that Peoples Gas excludes fines and penalties from base rate recovery requests and it does not include fines and penalties in any rider recovery mechanism. Schott Reb., JA Ex. 9.0 REV., 7:138-145. The conditions requested by the AG, therefore, would be superfluous and thus, should be denied.

D. Cap on Fixed Charges for Residential Revenue Recovery

In their Initial Brief (at 65-67), the AG proposes for the first time a condition requiring that the customer charge portion of the Gas Companies' bills for residential heating class customers be lowered so that it is no more than 40% of their bills. The AG's proposal would disrupt and change the rate design just recently established for the Gas Companies by the Commission in the *Peoples Gas 2014 Rate Case* Order issued on January 21, 2015, as modified by the Commission's February 11, 2015 Second Amendatory Order. There is no evidence in the record to support the AG's request for why the Commission should change the customer charges it set for the Gas Companies only a few months earlier, based upon the entirety of the record in that rate case. Other than its standard opposition to higher customer charges generally, the AG's stated basis for why the Commission should change the rate design it just established is that two days after the final Order was issued, the Supreme Court of Illinois issued its opinion affirming the Commission's permanent authorization of the Gas Companies' decoupling rider, Rider VBA. The problem with this argument, however, is that in setting the Gas Companies' rate design in *Peoples Gas 2012 Rate Cases*, the Commission made its determination based upon the assumption that Rider VBA would be in effect. *Peoples Gas 2012 Rate Cases at* 174.

The AG's request, therefore, should be rejected by the Commission.

E. The AG's Proposed Riders to "Correct" Previously-Set Rates

The AG continues to request that the Commission impose two rider mechanisms – one for the cost of FTEs and the other for costs for the Integrys Customer Experience ("ICE") project (Integrys' customer information system) – that would require the Gas Companies to return to customers the difference between cost recovery that was approved in the *Peoples Gas 2014 Rate Case*, and what AG witness Mr. Effron argues are the lower, actual costs for these items. *See* AG Init. Br. at 53-55 (FTEs), 70-76 (ICE); Dir., AG Ex. 1.0, 19:433 – 20:457. With respect to

the ICE project costs, the Commission addressed and rejected Mr. Effron's arguments concerning the appropriate level of cost recovery for this item in its January 21, 2015 final Order in those rate cases. Schott Sur., JA Ex. 18.0, 9:190-198. Mr. Effron's testimony and proposal in this proceeding is an effort to take "another bite" at this apple that the Commission already has denied. Further, singling out FTE and ICE costs (and savings) for such treatment, while ignoring other specific cost items that have increased, such as City paving, restoration and permitting costs, is unsound and unfair. Schott Reb., JA Ex. 9.0 REV., 19:406-412, 24:525-530.

Moreover, even assuming that Mr. Effron is correct that the rates set by the Commission for FTEs and ICE costs are higher than what those costs actually turn out to be – a position which the Joint Applicants dispute and not supported by the record evidence[25] – for the Commission to take such action to "fix" the rates it set by imposing riders that would refund those differences to customers would be a violation of the legal rule prohibiting retroactive ratemaking. *See Bus. and Prof. People for the Pub. Interest v. Illinois Commerce Comm'n*, 136 Ill. 2d 192, 205, 229-239 (1989) (holding that Commission order allowing it to issue a refund if it determined that a utility earned excess revenue constituted retroactive ratemaking because it required the Commission to make an active, after-the-fact determination that the rates it entered in a previous order were too high).

Staff correctly asserts in its Initial Brief (at 44) that because as discussed above these conditions would be in violation of and contrary to law, the Commission's Order in this proceeding cannot impose them even if voluntarily accepted by the Joint Applicants. *Id*. 136 Ill. 2d at 217. Staff, therefore, opposes these conditions as well. *See* Staff Init. Br. at 43-45; Hathhorn Reb., ICC Staff Ex. 12.0, 6:140 – 7:152.

[25] *See* Leverett Reb., JA Ex. 6.0, 23:609 – 27:697 (regarding FTE levels); Schott Reb., JA Ex. 9.0 REV., 20:430 – 24:515 (regarding ICE costs).

Accordingly, the Commission should deny the two rider conditions sought by the AG.

F. Illinois Board Member

In their Initial Brief, City/CUB requests that the Joint Applicants' commitment to have a minimum of one WEC Energy Group Board member be a resident of Illinois be modified to require that this board member be a customer of one of the Gas Companies.[26] *See* City/CUB Init. Br. at 96. While they rely upon language from the *AGL-Nicor Merger* Order as support for this request, City/CUB fails to acknowledge that for the AGL-Nicor merger, where the new holding company was to be further away from Nicor's service territory and would be managing a larger number of utilities in a larger number of states, the Commission did not require that the Illinois board member be a customer of Nicor. *See AGL-Nicor Merger* at 4, 15. Given that here the holding company will be located closer to the Gas Companies' service territories and be responsible for fewer utilities in fewer other states, it is reasonable for the Commission to impose a similar requirement on the WEC Energy Group Board as it did with AGL. City/CUB fail to explain or present evidence why a condition similar to what was found to be sufficient for the AGL-Nicor merger would not be sufficient here.

Moreover, as explained in the testimony of Mr. Leverett, it is not uncommon for the parent company of a utility to be located in a different state, and the residency of its board members or location of its headquarters has no impact of the company's focus on making sure each of its utilities provide high-quality service to their service territories. Leverett Reb., JA Ex. 6.0, 10:293 – 11:309. The residency of a utility holding company's board members is not predictive of whether or not the interests of the utility's customers will be protected, and this is especially true in a situation like the present case where the Gas Companies will maintain local

[26] It appears that City/CUB has decided not to pursue City/CUB witness Mr. Wheat's proposal for the Commission to impose a condition requiring that for five years the WEC Energy Group Board maintain the same proportion of Illinois members as currently exist on Integrys' Board. *See* Wheat Dir., City/CUB Ex. 1.0, 3:37-39.

headquarters and have local management running the day-to-day operations of the utilities. Leverett Sur., JA Ex. 15.0, 19:433 – 20:437.

Accordingly, the Commission should deny City/CUB's request for the Commission to add a requirement to the Joint Applicants' Illinois board member commitment requiring that the Illinois board member be a customer of the Gas Companies.

G. Exclusion of All Transaction Costs, Including Severance Packages

Based upon the testimony of City/CUB witness Mr. Gorman, the AG requests that approval of the Reorganization be conditioned on exclusion of all transaction costs including severance packages. *See* AG Init. Br. at 76-77. The Joint Applicants have agreed to conditions addressing these concerns, as explained in the testimony of Joint Applicants witness Mr. Lauber (numbering from JA Ex. 15.1 REV.):

> 20. Transaction costs incurred in accomplishing the proposed Reorganization shall not be recoverable from ratepayers.
>
> 41. The Gas Companies will not seek recovery of any severance costs that are transaction costs because they are incurred as part of accomplishing the Transaction (*i.e.*, executive change-in-control payments identified in SEC Form S-4).

See Lauer Reb., JA Ex. 7.0, 20:434 – 21:451; Lauber Sur., JA Ex. 16.0, 10:230-231; JA Ex. 15.1 REV., at Nos. 20, 41.

IV. AMRP INVESTIGATION DOCKET

As described by Staff in its initial brief (at 48-49), there presently is pending a separate Commission-initiated docket to investigate the hearsay allegations made in two anonymous letters sent to the Commission concerning management with respect to the AMRP and the Liberty audit. Staff recommends two additional conditions designed to address the possibility that, as a result of this investigation docket, the Commission could determine that there was misconduct or unlawful or criminal activity committed by one or more employees or agents of

the Joint Applicants. Staff's proposed conditions seek to prevent the recovery in rates of any costs arising from such wrongful conduct and to require action by Wisconsin Energy to terminate any such person found to have committed such wrongful acts.

The Joint Applicants do not have any objection to the Commission imposing conditions to address these concerns. However, the Joint Applicants have concerns that, as drafted, the conditions proposed by Staff could result in confusion and uncertainty with respect to who would make the determination that such conduct had occurred before the conditions required action by the Joint Applicants, as well as what the term "misconduct" means in the context of these proposed conditions. The Joint Applicants believe that it should be made clear that it is the Commission who will be making the determination that misconduct or illegal activity has occurred that triggers these conditions. Also, with respect to the second condition that would require termination of an employee determined to have committed such conduct, the Joint Applicants believe the language should be modified to address the potential scenario where the employee at issue could be a union member whose termination could be subject to grievance or arbitration proceedings. Accordingly, the Joint Applicants propose that the Commission adopt the following language for conditions regarding the investigation docket[27]:

> In the event that the Commission determines, as a result of any investigation into the two anonymous whistleblower letters currently the subject of a Commission-initiated investigation in Docket No. 15-0186, that any of the Joint Applicants (including any of their employees, agents, contractors, or representatives) are responsible for misconduct or unlawful or criminal activity, then the Joint Applicants' shareholders shall be responsible for and shall not be permitted to recover through rates any expenses, costs, fines, penalties, fees or economic losses of any description whatever, however incurred, that the Commission determines to have arisen from such misconduct or unlawful or criminal activity. As used in this condition, the term "investigation" shall not be limited to Docket No. 15-0186, but shall encompass any other related state or federal investigation. As used in this

[27] Counsel for the Joint Applicants have communicated with Staff counsel and understand that Staff agrees with the proposed language for these conditions set forth above.

> condition, the term "misconduct" shall mean wrongdoing or disregard for compliance with applicable laws, rules, regulations, Commission Orders, and/or well-established industry standards. Wisconsin Energy and Integrys shall be permitted to enter into a contractual arrangement regarding this liability.
>
> In the event that the Commission determines, as a result of any investigation into the two anonymous whistleblower letters currently the subject of a Commission-initiated investigation in Docket No. 15-0186, that an officer, employee, agent or representative of the Joint Applicants either (a) attempted to prevent from being accomplished or improperly influence the investigation of the AMRP being conducted by the Liberty Consulting Group pursuant to the Commission's final Order in Docket Nos. 12-0511/12-0512 (cons.) or (b) committed material misconduct or unlawful or criminal activity, then Wisconsin Energy shall take all available and appropriate action(s) to terminate from employment or any contractual relationship that officer, employee, agent or representative of the Joint Applicants. As used in this condition, the term "investigation" shall not be limited to Docket No. 15-0186, but shall encompass any other related state or federal investigation. As used in this condition, the term "misconduct" shall mean wrongdoing or disregard for compliance with applicable laws, rules, regulations, Commission Orders, and/or well-established industry standards.

These conditions have been added as Nos. 46 and 47 to Appendix A. Furthermore, these conditions address the same concerns targeted by the AG's proposed condition 7 contained in Appendix C to the AG's initial brief, making that proposed condition duplicative and unnecessary.

City/CUB, in its initial brief (at 100-101), re-assert the same arguments included in GCI's Confidential Motion for Extension of the Schedule and Motion to Hold Open the Record for Additional Evidence filed on March 24, 2015, and again ask for the same delay of a decision in this proceeding that is requested in the Motion. At the time of filing this Reply Brief, the Motion is still pending and has not yet been decided. Rather than repeat them here, the Joint Applicants refer the Commission to (and incorporate by reference as if fully set forth herein) the Responses filed in opposition to the Motion by both Staff and the Joint Applicants on April 7, 2015, which

present numerous reasons why the Commission should deny GCI's Motion and the delay requested by City/CUB in their initial brief.

V. CONCLUSION

The initial briefs of the AG and City/CUB fail to rebut the Joint Applicants' evidentiary presentation demonstrating that the Reorganization meets the requirements of the Act. In light of the law and facts set forth above and in the Joint Applicants' Initial Brief (as well as in Staff's Initial Brief), the Commission should reject the arguments of the AG and City/CUB that the Joint Applicants have somehow not met their burden as to the requirements of Sections 7-204(b)(1), (2), (3), (4), (5), and (7). Accordingly, the Commission should make the findings required by Section 7-204 of the Act and approve the Reorganization, and make other findings and approvals requested by the Joint Applicants in this proceeding, including but not limited to, approval on an interim basis of the WEC Energy Group Affiliated Interest Agreement, and grant any other relief the Commission deems appropriate.

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Respectfully Submitted,

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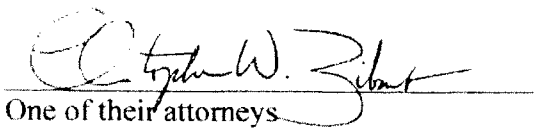
By: 
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